SENATE—*Friday, March 13, 1987*

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN BREAUX, a Senator from the State of Louisiana.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Spirit of the living God, breathe Your life and love upon the Senate of the United States. Touch with Your quickening power the hearts of national leaders that they may sense the claim of service and commitment to the profound needs of our generation. Enlighten their minds to comprehend the imponderable issues—their causes and the solutions. Quiet them inwardly to hear the still small voice that directs the way to go. Reinforce their wills to obey. Save them from all the corrupting forces which conspire to diminish the determination to fulfill the sacred trust. Prosper their labors. Surprise them with joy in achievements exceeding their largest expectations. In the name of the all-wise, all powerful Lord we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 13, 1987.

To the Senate:

Under the provisions of Rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN BREAUX, a Senator from the State of Louisiana, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. BREAUX thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the distinguished majority leader.

Mr. BYRD. Mr. President, I thank the Chair.

THE JOURNAL

Mr. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER RESERVING LEADERSHIP TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the time of the distinguished Republican leader be reserved until later in the day.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SCHEDULE

Mr. BYRD. Mr. President, there will be three Senators recognized under the orders entered yesterday, each for not to exceed 5 minutes, Senators PROXMIRE, ARMSTRONG, and HEINZ.

There will then be a period for speeches out of order, and I anticipate that Senator NUNN will be continuing the delivery of his series of speeches anent the interpretation of the ABM Treaty.

Following that period, which is not to extend beyond 11 o'clock this morning, in which Senators may speak up to 30 minutes out of order, the new Senator from Nebraska will be sworn in, after which there will be a short period for the transaction of morning business with Senators permitted to speak therein for not to exceed 5 minutes.

No rollcall votes are anticipated today, and upon the conclusion of business the Senate will go over until Tuesday next at the hour of 2:30 p.m.

On Tuesday next, I anticipate that the Senate will begin consideration of the disapproval resolution with respect to Contra aid funding. I have not had an opportunity to discuss this with the distinguished Republican leader or with Senator WEICKER, the author of the disapproval resolution. I hope that it will be possible to set a definite hour on next Wednesday at which time the Senate may vote up or down on the disapproval resolution.

There is a time limitation on that resolution of 10 hours. No motion to table, no motion to recommit, no motion to reconsider, no motion to postpone will be in order and an amendments will be in order.

Consequently, there will be a vote and, as I say, I hope it will be next Wednesday, and I also hope we can announce, well in advance, the hour at which that vote will take place so that all Senators may be prepared, and on notice.

ORDER RESERVING LEADERSHIP TIME

Mr. BYRD. Mr. President, I ask unanimous consent that I may reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AGENDA

Mr. BYRD. Mr. President, while the first speaker under the order of yesterday is arriving, I should alert Senators that, beginning next week, the business and the pace of action on the floor will pick up.

Senators have for several days not had to be on the floor, for rollcalls or quorum calls and the transaction of business, to a great extent. Therefore, committees and subcommittees have had ample opportunity to meet to conduct oversight responsibilities under the Constitution and to conduct hearings and markups on legislation and on nominations.

A good bit of work has been reported by committees already to the calendar and the Senate has acted thereon. Several nominations have been processed and confirmed, and several important pieces of legislation, including the Clean Water Act, the highway bill, the emergency legislation for the homeless, appliance standards legislation, emergency agricultural assistance, limitation on Government Mortgage Association fees, and other measures have been acted upon.

Beginning next week, of course, as I have indicated, there will be the action on the disapproval resolution dealing with Contra aid, and then during the remainder of the week I would anticipate that there will be floor debate and, in all likelihood, some rollcall votes in relation to the moratorium resolution on Contra funding which came over from the House on yesterday.

I made the effort yesterday to call up the moratorium resolution, and it was objected to, which was quite properly done under the rules. I also attempted to get unanimous consent to have that moratorium legislation as the first order of business after the swearing in of the new Senator from Nebraska today, and an objection to that unanimous-consent request was made, all in accordance with the rules.

That legislation, therefore, is now advancing to the calendar by virtue of my having initiated rule XIV, and by midweek next week the legislation will be on the calendar and subject to a

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

motion to be called up. I anticipate that there will be some difficulties in getting the legislation up.

I have been forewarned of that by the distinguished Republican leader who has exercised his rights under the rules, and all Senators will, of course, have an opportunity to exercise their rights under the rules, but I would anticipate that there will possibly be rollcall votes on every day of next week.

It will not be long thereafter, as a matter of fact, I would imagine that even beginning next week, we will see a greater flow of legislation from committees. The Committee on Banking, which is chaired by the able and eloquent Senator from Wisconsin, [Mr. PROXMIRE], has been extremely active this year already. I am informed by the chairman that we may expect legislation to reach the calendar from his committee at some point next week. I would hope that I could work out an arrangement with the distinguished Republican leader, the chairman of the committee, the ranking member, and others to take up that legislation soon and under a time agreement.

Mr. PROXMIRE. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. PROXMIRE. I commend the majority leader on this. I want to tell him we not only have reported out the day before yesterday a major banking bill, a very controversial bill, but yesterday, under the subcommittee chairmanship of Senator ALAN CRANSTON, who did a superb job, we reported out a major housing bill. So we have two big bills that will be in the Senate, each of which will take considerable time and effort by this body.

Mr. BYRD. Very well. I thank the chairman. I thank him not only for the excellent work he is doing as chairman of the committee in pressing forward with the Nation's business, but also for his statement today which is a clear indication that the Senate will soon have more work to do in session. Of course, committees will continue to meet, but we can expect a greater flow of legislation now that committees have had ample opportunities to meet, and they have taken advantage of those opportunities. I want to compliment and thank all chairmen and ranking members and, as a matter of fact, all members of committees on both sides of the aisle.

Mr. President, I yield the floor.

ANGOLAN FREEDOM FIGHTERS CONTINUE STRUGGLE

BATTLE GOES ON IN ANGOLA

Mr. DOLE. Mr. President, our attention is focused now on the question of aid for the democratic resistance, the Contras, in Nicaragua. We will be making an important decision on that question within the next several days.

But I also want to remind the Senate that, while the struggle for a free Nicaragua goes forward, similar struggles are also going on in other places around the world.

One of the most critical battles is being fought in Angola, where the democratic resistance organization [UNITA], led by Jonas Savimbi, is carrying on a highly effective effort to establish a democratic government.

LETTER FROM SAVIMBI

Recently, Dr. Savimbi sent me a letter, direct from his headquarters in the liberated section of Angola, updating me on the status of the resistance effort, and expressing appreciation for American assistance to UNITA. I would like to share this letter with the Senate, and ask that the text be printed in the RECORD.

POLITICAL GOALS OF UNITA

I would also like to take special note of two sections of the letter. One stresses the political goals of UNITA, which are, and this is a quote: "To persuade the other side to accept political dialog and national reconciliation; withdrawal of all foreign forces—namely, the 45,000 Cubans; holding of free elections, and establishment of governing institutions representing Angola's natural diversity of political opinion."

The bottom line is this: UNITA wants negotiations, not the surrender of the other side; peace, not victory; democracy, not power for itself. It seems to me that is what we all want, not only for Angola, but for all countries torn by internal conflict.

UNITA CONDEMNS APARTHEID IN SOUTH AFRICA

The other point in the letter I would stress is the categorical and strong condemnation of apartheid in South Africa, and his pledge to, and this is another quote, "work for the effective demise of apartheid." The charge that support for UNITA somehow represents support for South Africa, or apartheid, is as phony as a 3 dollar bill.

The fact is, the root issue in Angola is exactly the same as the issue in South Africa. In both countries, blacks are being oppressed by nondemocratic regimes. In Angola, the crime is compounded by the fact that the Marxist MPLA is propped up by foreign forces—Soviets, Cubans—mercenaries in the truest, darkest sense of that word. Let's end apartheid in South Africa; and let's also end Marxist repression of blacks in Angola.

BLACK AMERICANS FOR A FREE ANGOLA LUNCHEON

Mr. President, I would also like to make brief mention of an event I had the privilege of sponsoring here on Capitol Hill earlier this week. It was a luncheon held under the auspices of a newly formed organization called "Black Americans for a Free Angola."

The guest of honor at the luncheon was the foreign affairs secretary of UNITA, "Tito" Chingunji (chin-guhn-gee), who has himself suffered grievously through Angola's long struggle for freedom—eight of his brothers and sisters have been killed; first, in the war for independence against the Portuguese and, now, in the war against the Marxist MPLA. As Dr. Savimbi did in his letter, Mr. Chingunji outlined to those at the luncheon the status of UNITA's struggle and its goals for Angola.

DAWKINS MOVING FORCE BEHIND NEW GROUP

The moving force behind the new organization is one of the most respected and well-known religious leaders of our country, The Reverend Clarence Dawkins. At the luncheon, Reverend Dawkins spoke compellingly—and I should say, that whenever Reverend Dawkins speaks, and I've heard him on a number of occasions, he is very compelling. Reverend Dawkins spoke with great conviction and effect about the struggle of black Angolans to achieve their freedom. And I know he intends to work to bring the true story of what is going on in Angola to a wider audience in America, especially among black Americans. Reverend Dawkins believes, rightly, that the struggle of black Angolans for their freedom is directly related to the struggle of blacks in this country for their rights and dignity, and the similar struggle of blacks and other oppressed people around the world.

Their being no objection, the letter was ordered to be printed in the RECORD, as follows:

UNITA,
Jamba, March 3, 1987.

Hon. ROBERT DOLE,
U.S. Congress,
Washington, DC.

DEAR SENATOR DOLE: Ten months ago the United States began to assist us in our resistance to the Soviet-Cuban occupation of our country. The assistance came at a very critical time when another massive Soviet-Cuban-MPLA military offensive was being launched against our liberated positions of Angola. Bolstered by fresh arrival of Soviet military hardware, the enemy was desperately trying to regain some of the losses he incurred in the period 1983-1985 when UNITA doubled the size of the territory under our control.

Fortunately, as a result of the timely US support, forty-one Soviet-made enemy aircraft (including the Mig-23 and Mig-21 fighters, the SU-22 Sukhoi bombers, the MI-8, MI-17 and MI-25 helicopter gunships) were shot down by our forces between May and October 1986 when the offensive ended. This represents more than $250 million enemy losses, or a third of the enemy airpower.

The assistance did not only enable us to effectively repulse the offensive, it also enabled us to maintain intact the territory under our control, consolidate our penetration in the northern part of the country where the support from local population has become quite impressive, inflict the heaviest enemy losses in aircraft and, most

importantly, bring the enemy closer to understanding that the war in Angola may, indeed, be unwinnable no matter how much more weapons and expeditionary forces the Soviets may pour into the country, and that negotiations and national reconciliation are, therefore, the only way out of the conflict.

UNITA's goal, in fact, is to persuade the other side to accept dialogue and national reconciliation, withdrawal of all foreign forces (namely the 45,000 Cubans), holding of free elections and establishment of governing institutions representing Angola's natural diversity of political opinion and basic aspirations to life liberty and happiness. Last August, our VI Congress issued our Peace Platform calling on UNITA and MPLA to engage without further delay, in the process leading to peace and stability in our country.

While the MPLA's leadership has not responded to this energetic patriotic appeal, we are nevertheless encouraged by the continuing response of the rank and file MPLA sympathizers who are rising up in "dissident" groups in manifest support to our goals. The enemy troop morale continues to deteriorate rapidly, while the wanton atrocities by Cubans against the civilian populations alienate further the people from the occupying forces, resulting in enormous increase in popular participation in our struggle.

It is obviously impossible to pursue peace and justice from a position of military weakness, particularly when the enemy seeks domination instead of democratic power sharing, physical elimination of the opposition instead of coexistence, confrontation instead of dialoque, and military victory instead of durable political settlement. Fortunately, the US help is now lending the much-needed weight to our long-held goals of dialogue, national reconcilication and durable peace in Angola.

Whether a settlement is indeed in sight or not will definitely depend primarily on the continuity of the United States commitment to help us find the solution. The US assistance is of utmost significance militarily, politically and diplomatically. By virtue of a massive Soviet-Cuban military build-up, the Angolan conflict is well beyond the ability of Angolans alone to deal with: the US assistance is essential.

The problems in this region of Southern Africa are compounded by the existence of the apartheid system in South Africa, a system unanimously condemned by all mankind. Whatever the disagreements on the methods to bring about an end to apartheid, the fact is it must be brought to an end without, however, forcing a choice between the evils of apartheid and Soviet aggressive expansionism. We totally support and work for the effective demise of apartheid. But we totally reject the demagogic oversimplification of complex issues by those who, just because South Africa is sympathetic to anti-Communist causes, argue that to support the resistance to Soviet-Cuban aggression is "to go to bed with apartheid". We stand firm against racism in any form or color. Racial injustice in South Africa is no more undesirable than racism in my country where the far-away white Russians have imposed an oppressive minority rule on us, recolonizing and ravaging Angola.

We remain, however, convinced that the settlement to the Angolan conflict may enhance the prospects of settlement to the other regional problems.

I hope the above may help to bring you up to date on the situation in Angola where your understanding and leadership in the United States Congress is of paramount importance to the whole future of this region as well as to the defense of important US interests.

We owe much of the currently positive United States policy to your personal commitment over the past few years, starting with the historic act of the repeal of the Clark Amendment.

We count on you for the continuation of adequate policies on Angola where the Free World, the United States and the Angolan freedom-seekers stand to win.

Yours sincerely,

JONAS MALHEIRO SAVIMBI,
President.

BICENTENNIAL MINUTE

MARCH 13, 1893: SENATE COMMITTEE REORGANIZATION

Mr. DOLE. Mr. President, 94 years ago today, on March 13, 1893, the New York Times carried a story on the reorganization of Senate committees that followed the Democratic victory in the election of 1892. The shift in majorities meant considerable change in the committee structure. Whereas today, the Senate has 16 standing committees and 5 select or special committees, in 1893 the Republican and Democratic conferences were faced with 44 standing committees, and 16 select committees.

In point of fact, however, there existed about the same number of important committees then as now. The many other committees existed primarily to give their chairmen a room in the Capitol, and at least one staff person. The Democratic conference hoped to give every member of their party a committee chairmanship.

Thus, along with such familiar standing committees as Finance and Foreign Relations, the Senate had standing committees to audit and control the contingent expenses of the Senate; on epidemic diseases; to examine the several branches of the civil service; on fisheries; on the improvement of the Mississippi River; on private land claims; on public buildings and grounds; on transportation routes to the seaboard; and on revolutionary claims—more than a century after the revolution. There also existed select committees on the transportation and sale of meat products; on Indian depredations; to establish the University of the United States; and to inquire into all claims of citizens of the United States against the Government of Nicaragua.

The new Democratic majority also planned to allot five committee chairmanships to senior members of the Republican Party, the same number that the Democrats had held in the minority. That was one Senate tradition that senior members of the minority would certainly have no objection to reviving.

RECOGNITION OF SENATOR PROXMIRE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE] is recognized for not to exceed 5 minutes.

Mr. PROXMIRE. Thank you, Mr. President.

THE TIME TO RAISE THE MINIMUM WAGE IS NOW

Mr. PROXMIRE. Mr. President, why shouldn't we raise the minimum wage? Here is the one way we can help millions of struggling low-income people without increasing Federal spending one nickel. Consider the gross injustice. In the past 6 years the minimum wage has not gone up one penny. Meanwhile the cost of living has risen by 27 percent. During the same period the monetary compensation of the very top executives of 300 of the largest nonfinancial corporations increased by an unbelievable 78 percent. Members of this body are constantly singing the blues about how underpaid we are. So how much do we as Members of the Congress earn now as compared to 1981? $89,500 today compared to $70,900 in 1981. And that does not include one penny for honoraria income. Including the full honoraria income, Senators in 1981 could earn $92,170. Today we can earn $125,380. Compare that for the minimum wage worker whose $6,700 earnings today are the same as he made in 1981. Inflation has stolen $1,340 of that annual earning of the minimum wage worker since 1981. And how many minimum wage workers earn honoraria income?

It gets worse. The overwhelming majority of persons who work for the minimum wage are not employed full time. This includes literally millions who work part time for what the Bureau of Labor Statistics calls economic reasons. Typically these part-time workers work 20 hours per week and earn only $3,350 per year. Of course, some of these workers live in families where other members of the family also earn income. But this is also true of persons who earn $50,000 or $100,000 per year.

This Congress faces a serious dilemma. We are all aware of the enormous deficits. We are intensely conscious of the iron necessity of holding down Federal spending. We know we have restrained spending on social programs including programs designed to help low-income people with their housing, their health, and even to provide enough food through food stamps.

So how can we help low-income Americans? How can we help them without carting hundreds of truckloads of money out of the U.S. Treas-

ury? An increase in the minimum wage is a reasonable answer. It is the best answer. Let low-income people earn more than the pittance we pay them now.

How can any Senator who has enjoyed a $15,000 increase in his pay in the last few months hesitate to permit his low-income constituents from receiving an increase in the minimum wage that would recognize the grim, in fact, the savage reduction in pay that our country's low-income earners have suffered because of the failure of this Congress to raise the minimum wage for 6 years? Strictly because of this congressional neglect low-income workers have, in effect, suffered a real cut of 20 percent in their income and that income is well below the poverty standard even for those low-income workers lucky enough to have full time 40 hour a week jobs.

Mr. President, the Congress has not only cruelly hurt low-income workers by failing to act on the minimum wage. It has stunted economic development in this country. If the Congress had simply maintained the same worker purchasing power for minimum wage workers since 1981, demand in this country would have risen by tens of billions of dollars a year. One sure thing about low-income people. In most cases, they spend every nickel they earn. They have to spend to live, to buy the food, the housing, the clothing that are the essentials of life. That spending by itself requires more production and more jobs. That spending leads to higher incomes for persons and corporations. It means higher tax receipts for the Federal Government. There is another dividend in a higher minimum wage. It spells less welfare. It means less Federal spending. It reduces the deficit on both sides of the ledger—more revenues, less spending.

Mr. President, of course, there is a negative side to any economic action of this kind that the Congress takes. The minimum wage, by its very existence, prevents some employers who are willing to hire workers for very low pay from actually hiring those workers, since they must be paid a minimum wage. And, let's face it, the higher the minimum wage, the fewer persons employers can afford to hire. An increased minimum wage would also have some inflationary effect. The bigger the increase the more certain and substantial the inflationary effect. But the increased income of low-income persons, income that would be spent, income that would surely stimulate the economy would largely counterbalance these adverse effects. Our historical experience underlines this. In the 1960's when the minimum wage reached its apex in "real" terms, that is allowing for inflation, unemployment was at its lowest. In the 1980's when the "real" minimum wage has dropped well below its "real" levels of the 1960's and 1970's unemployment has been consistently higher.

Some would argue that the increase in the minimum wage will hurt the country's international trade balance. It won't for two reasons. First, the minimum wage does not come close to affecting wages in either our export sensitive or import sensitive industries. Second, there is the vivid historical experience. In the 1980's while the real minimum wage has sunk almost out of sight our trade balance has become more adverse than at any time in American history.

Think of it, Mr. President, here is a way to reduce Federal spending, raise Federal revenues, stimulate the economy and do justice to our poorest working citizens. It is time the Congress acted. And now.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The absence of a quorum is noted and the clerk will please call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I understand that two of the orders will not be used today by Mr. ARMSTRONG and Mr. HEINZ. I, therefore, ask unanimous consent that those orders be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 10 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Thereupon, at 9:49 a.m., the Senate recessed until 10 a.m.; whereupon, the Senate reassembled when called to order by the Acting President pro tempore [Mr. BREAUX].

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader.

RECORD OPEN UNTIL 5 P.M. TODAY

Mr. BYRD. Mr. President, I ask unanimous consent that Senators may have until 5 p.m. today to have statements appear in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PERMISSION FOR COMMITTEES TO FILE REPORTS UNTIL 5 P.M. TODAY

Mr. BYRD. Mr. President, I also ask unanimous consent that committees may have until 5 p.m. today to submit committee reports.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PERMISSION FOR COMMITTEES TO FILE REPORTS ON MONDAY, MARCH 16, 1987

Mr. BYRD. Mr. President, I ask unanimous consent that during the hours between 2 p.m. and 5 p.m. on Monday next, committees may submit committee reports.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I anticipate the arrival of Senator NUNN momentarily. I see no other Senators seeking recognition. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CONRAD). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

The PRESIDING OFFICER. Under the previous order, Senators may now speak out of order for up to 30 minutes each, not to extend beyond the hour of 11 a.m.

INTERPRETATION OF THE ABM TREATY

PART III: THE ABM NEGOTIATING RECORD

Mr. NUNN. Mr. President, in my remarks today, I will present the third segment of my report on the ABM Treaty reinterpretation controversy.

On Wednesday, I addressed the original meaning of the treaty as presented to the Senate in 1972. Yesterday, I discussed the statements and practices of the parties from the time the treaty was signed in 1972 until the reinterpretation was announced in late 1985.

Today I will address the record of the ABM Treaty negotiations in 1971 and 1972 as provided to the Senate by the Department of State.

Mr. President, I again apologize to the Chair and my colleagues for my raspy voice this morning, but I am still battling laryngitis, though it is getting a little better.

In my remarks on Wednesday, I concluded that the Nixon administration explicitly told the Senate during the

treaty ratification proceedings that the treaty prohibits the development and testing of mobile/space-based ABM's using exotics. I also concluded that the Senate clearly understood this to be the case at the time it gave its advice and consent to the treaty, and that the evidence of this is compelling beyond a reasonable doubt.

Yesterday, I reviewed the available record of the United States and Soviet practices and statements during the 13-year period between the signing of the treaty and the announcement of the reinterpretation which occurred in October of 1985.

Under both international and domestic law, such evidence may be considered in determining the meaning of the treaty.

Based on the information provided to the Senate to date by the State Department, I found no evidence which contradicted the Senate's original understanding of the meaning of the treaty. On the contrary, I noted that successive administrations, including the Reagan administration, had prior to 1985 consistently indicated that the treaty banned the development and testing of mobile/space-based ABM's using exotics.

Summarizing then, where the situation now stands after the first two reports: First, the Reagan administration made a case for a broader reading of the treaty based, in part, on an analysis of the Senate ratification proceedings, arguing that the record of this debate supported the reinterpretation. I found this case not to be credible. Second, the Reagan administration made a case for a broader reading of the treaty based, in part, on subsequent practice, arguing that the record of the United States and Soviet statements and practices supported the reinterpretation. I also found this case not to be persuasive.

Some advocates of the broader reading—including its principal author, Judge Sofaer—now appear to be hanging their hats on the negotiating record, arguing that this negotiating record provides persuasive or compelling support for their case. As I noted on Wednesday, the administration's focus on the negotiating record as a primary source of treaty interpretation confronts us with three separate possibilities:

The first possibility: If the negotiating record is consistent with the original meaning of the treaty as provided to the Senate by the executive branch, the traditional interpretation would prevail beyond question.

The second possibility: If the negotiating record is ambiguous or inconclusive, there would be no basis for abandoning the traditional interpretation. Absent compelling evidence that the contract consented to by the U.S. Senate was not the same contract entered into between the Nixon administration and the Soviet Union—and we do not have that kind of evidence—the treaty presented to the Senate at the time of ratification should be upheld.

There is a third possibility: If the negotiating record clearly establishes a conclusive basis for the reinterpretation, this would mean that the President at that time signed one contract with the Soviets and the Senate ratified a different contract. Such a conclusion would have profoundly disturbing constitutional implications and as far as I know would be a case of first impression.

Because of the grave constitutional issues at stake, and my responsibilities as chairman of the Armed Services Committee and cochairman of the Arms Control Observer Group, I have taken a personal interest in this matter and have spent countless hours in S-407 reviewing the negotiating record, which is still classified.

It is important to note that the material presented in terms of the negotiating record consists of a disjointed collection of cables and memoranda.

This is not unusual. A lot of people really do not understand what a negotiating record is. It is not a clear transcript of a dialog between the two superpowers as they negotiate around the table—far from that. That is not what a negotiating record is. There is no single document or even set of documents that constitutes an official negotiating history. There is no transcript of the proceedings. Instead, what we have is a variety of documents of uneven quality—some of them precise, some of them well structured, some of them done hastily, some of them simply notes in the margin. Some involve detailed recollections of conversations, others contain nothing more than cryptic comments.

Nonetheless, this is the record on which the Reagan administration's decision was based. If the State Department identifies and submits other relevant documents, I shall be prepared to review them as well. I want to stress to my colleagues that what I have examined is a negotiating record presented by the State Department to the U.S. Senate. If there are other matters which I have not seen, then, of course, my remarks cannot possibly cover those matters. We have been assured that we have been given the negotiating record as known to the State Department.

Having been through the material, I will understand why, as a matter of international law, the negotiating record is the least persuasive evidence of a treaty's meaning. It does not have the same standing, of course, as the treaty itself under international law; it does not have the same standing as the conduct of the parties subsequent to entering into the agreement; it does not have the same standing as the ratification proceedings whereby the Senate takes formal testimony and has formal debate and has formal presentation of matter by administration witnesses. To put this in the right international legal framework Lord McNair, who is an expert on treaties and interpretations thereof, states as follows:

> The preceding review of the practice indicates that no litigant before an international tribunal can afford to ignore the preparatory work of a treaty, but that he would probably err in making it the main plank of his argument. Subject to the limitations indicated in this chapter, it is a useful makeweight but in our submission it would be unfortunate if preparatory work ever became a main basis of interpretation. In particular, it should only be admitted when it affords evidence of the common intention of both or all parties.

This same general view is set forth in the commentary on the second restatement of the foreign relations law of the United States, which notes that "conference records kept by delegations for their own use * * * will usually be excluded" from consideration under international law, although they may be considered by national courts for domestic purposes.

The materials in the negotiating record provided the Senate simply do not compare in quality to the debates and reports normally relied upon for interpretation of legislation. Nonetheless, the records provided to the Senate contain a significant amount of material bearing on the issue of the development and testing of exotics.

Based on my review, I believe that Judge Sofaer has identified some ambiguities in this record. One cannot help but wish that the United States and Soviet negotiators had achieved a higher level of clarity and precision in their drafting of this accord. Of course, as we in the Senate well know, writing clear law is a worthy goal but one which is not easily attained. These ambiguities are not, however, of sufficient magnitude to demonstrate that the Nixon administration reached one agreement with the Soviets and then presented a different one to the Senate.

I want to repeat that sentence, because I think it is important: These ambiguities are not, however, of such magnitude to demonstrate that the Nixon administration reached one agreement with the Soviets and then presented a different one to the Senate.

Notwithstanding the ambiguities, the negotiating record contains substantial and credible information which indicates that the Soviet Union did agree that the development and testing of mobile/space-based exotics was banned. I have concluded that the preponderance of evidence in the negotiating record supports the Senate's original understanding of the treaty—that is, the traditional interpretation.

I have drafted a detailed classified analysis which examines Sofaer's arguments about the negotiating record at great length. Over the next few days, I intend to consult with the distinguished majority leader, Senator BYRD, about submitting this report for the review of Senators in room S-407. I will also work with the State Department to see how much of this analysis can be declassified and released for public review.

I would, of course, like for all of it to be released.

Mr. President, I believe it is appropriate at this juncture to pause for a moment and reflect on how the administration could be in such serious error on its position on this very important issue. First, the administration, in my view, is wrong in its analysis of the Senate ratification debate. I think I have set that forth in great detail.

Second, I think the Reagan administration is wrong in its analysis of the record of subsequent practice, at least insofar as we have been given information on that subject.

Third, I believe the administration is wrong in its analysis of the negotiating record itself. I believe that we need to take a look at the procedure by which the administration arrived at its position. I think the procedure itself, as people find out more about it, will reveal itself as having been fundamentally flawed.

At the time the decision was announced by the Reagan administration in 1985, the administration was divided as to the correct reading of the negotiating record, with lawyers at the Arms Control and Disarmament Agency, the Defense Department, and even within Judge Sofaer's own office holding conflicting views. By his own admission, Judge Sofaer had not conducted a rigorous study of the Senate ratification proceedings or the record of United States and Soviet practice, even though these are critical—indeed crucial—elements of the overall process by which one interprets treaties. Judge Sofaer made no effort to interview any principal ABM negotiator except Ambassador Nitze—even though most of these gentlemen were still active professionally and living in or near Washington, DC. Finally, there was no discussion with the Senate, despite the Senate's constitutional responsibilities as a conguarantor of treaties.

Mr. President, to say that this is a woefully inadequate foundation for a major policy and legal change is a vast understatement. I hope that we can now begin to address the real problems, begin to address the real problems that confront our Nation in the areas of strategic balance and arms control.

There are a number of specific steps which I believe our Government should take in trying to bring a final resolution to this legal controversy, which I think is an unfortunate controversy. First, I believe the State Department should declassify the ABM Treaty negotiating record after consulting with and informing the Soviet Union of our intentions. The only downside I can see to declassification, since this record is at least 15 years old, is the diplomatic precedent, and that is to be considered. However, if the Soviet Union is informed and consulted in advance of declassification, it seems to me that there would be no adverse precedent.

Second, we must recognize that by upholding the traditional interpretation of the treaty we certainly will not eliminate all the ambiguities with respect to the effect of the treaty. Some ambiguities remain. The United States and the Soviet Union have not reached a meeting of the minds on the precise meaning of such important words as "development," "component," "testing in an ABM mode," and "other physical principles." The appropriate forum for attempting to remove these ambiguities is the Standing Consultive Commission [SCC], as specified in the treaty. I strongly recommened that the SCC be tasked with the very important job of discussing these terms with the Soviet representatives and trying to come to mutual agreement.

Third and most important, we should continue to negotiate toward agreement in Geneva on a new accord limiting offensive as well as defensive systems, which would supersede the ABM Treaty as well as SALT II, and that would, of course, render moot this whole debate about narrow versus broad interpretation. Nothing would be better than to render this argument moot by entering into a comprehensive agreement on offense and defense and to have the terms defined with precision, clear up these ambiguities, and move on into the new arms control era.

Finally, we must develop an objective analysis of what tests are necessary under the strategic defense initiative which cannot be conducted under the traditional interpretation. We were told last year by General Abramson, the head of this project, that there were no tests which would be adversely impacted by the traditional interpretation before the early 1990's. If that has changed, we need to know what changes have taken place and what has driven those changes. I want to emphasize that our Armed Services Committee needs this analysis and we need it before we begin the markup of our committee bill, because any discussion of what this SDI money is going to be used for has to have as a foundation the overall interpretation and the tests that will be conducted thereunder.

I emphasize also that the determination should be based on a sound technological assessment and not on an ideologically driven kind of judgment. It is important for us to know that we are getting an analysis of scientists and not ideologs who have some agenda that has nothing to do with the technology and the tests at hand.

Mr. President, I hope to speak on this subject again in the future. I would like to be able to make my analysis of the negotiating record available to the public, but it is classified so I can only state the conclusions which I have given this morning. I will, however, be filing in the next several days a comprehensive analysis that will be classified. At some juncture in the future, as I have explained, I hope that that will be available for public dissemination.

I also repeat that I hope that we will be able to declassify this whole record. There will be many lawyers who would be interested in the analysis that has taken place. I hope our country could move out of the legalistic debate now and get down to the crucial substance of the SDI Program and the arms control issues with which we are faced.

Mr. President, I should like to read for the RECORD what I think is a very important statement by six former Secretaries of Defense of our country on the ABM Treaty. The statement, dated March 9, 1987, is signed by the Honorable Harold Brown, the Honorable Melvin Laird, the Honorable Elliot Richardson, the Honorable Clark Clifford, the Honorable Robert McNamara, and the Honorable James Schlesinger—as I count it, three Republicans and three Democrats who served under different administrations.

STATEMENT BY FORMER SECRETARIES OF DEFENSE ON THE ABM TREATY

MARCH 9, 1987.

We reaffirm our view that the ABM Treaty makes an important contribution to American security and to reducing the risk of nuclear war. By prohibiting nationwide deployment of strategic defenses, the Treaty plays an important role in guaranteeing the effectiveness of our strategic deterrent and makes possible the negotiation of substantial reductions in strategic offensive forces. The prospect of such reductions makes it more important than ever that the U.S. and Soviet governments both avoid actions that erode the ABM Treaty and bring to an end any prior departures from the terms of the Treaty, such as the Krasnoyarsk radar. To this end, we believe that the United States and the Soviet Union should continue to adhere to the traditional interpretation of Article V of the Treaty as it was presented to the Senate for advice and consent and as it has been observed by both sides since the Treaty was signed in 1972.

HAROLD BROWN.
MELVIN R. LAIRD.
ELLIOT L. RICHARDSON.
CLARK M. CLIFFORD.
ROBERT S. MCNAMARA.
JAMES R. SCHLESINGER.

I thank the Chair, and again I thank the majority leader for giving me the opportunity to make this series of presentations before the Senate.

Mr. President, there are three members of my staff to whom I express my appreciation for the countless hours they have worked on the issues which I have presented during the last 3 days: Mr. Bob Bell of my staff, who is an expert on arms control, formerly worked for the Library of Congress and the Foreign Relations Committee of this body. He has spent several hundred hours in S. 407 reviewing the tedious details of the negotiating record. He is one of six Senate staff members who have had access to those records.

I also express my thanks to Mr. Andy Effron, who is an attorney who formerly served with the Office of General Counsel in the Department of Defense and is now on the Senate Armed Services Committee staff. Although he has not had access to the negotiating record, he has been of tremendous assistance in the analysis of legal and international law matters relating thereto.

Also, I want to thank Mr. Jeff Smith, who is an attorney who was formerly in the legal adviser's office in the State Department and has been a staff member of the Armed Services Committee for the last couple of years. Mr. Smith has many other duties, including advising me on intelligence matters, but he has given us a lot of his time in helping analyze the ABM reinterpretation issue from an international law perspective. So I thank all of these dedicated staff members for very, very long hours on a very tedious but important subject.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 11 A.M. TODAY

Mr. BYRD. Mr. President, the swearing in of the new Senator from Nebraska will take place at 11 o'clock this morning. No Senator seeking recognition, I therefore ask unanimous consent that the Senate stand in recess until 11 a.m. today.

There being no objection, at 10:30 a.m. the Senate recessed until 11 a.m.; whereupon, the Senate reassembled when called to order by the Vice President.

SENATOR FROM NEBRASKA

The VICE PRESIDENT. The Chair lays before the Senate the Certificate of Appointment of the Honorable David Kemp Karnes as a Senator from the State of Nebraska.

Without objection, it will be placed on file, and the certificate of appointment will be deemed to have been read.

The certificate of appointment is as follows:

TO THE PRESIDENT OF THE SENATE OF THE UNITED STATES

This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of Nebraska, I, Kay A. Orr, Governor of said State, do hereby appoint David Kemp Karnes a Senator from said State to represent said State in the Senate of the United States until the vacancy therein caused by the death of Edward Zorinsky is filled by election as provided by law.

Witness Her Excellency our Governor Kay A. Orr and our Seal hereto affixed at Lincoln this 11th day of March 1987.

KAY A. ORR,
Governor.

The VICE PRESIDENT. If the Senator-designate will present himself at the desk, the Chair will administer the oath of office as required by the Constitution and prescribed by law.

Mr. Karnes of Nebraska, escorted by Mr. EXON, advanced to the desk of the Vice President; the oath prescribed by law was administered to him by the Vice President; and he subscribed to the oath in the official oath book.

(Applause, Senators rising.)

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LAUTENBERG). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONGRATULATIONS FOR SENATOR KARNES

Mr. BYRD. Mr. President, I join with my colleagues in congratulating our new Senator from Nebraska. Mr. KARNES is the 1,782d Senator to have served since the Senate first established a quorum on April 6, 1789.

It is a great honor for him to be a U.S. Senator, and I know I speak for all Senators in saying that we look forward to our service with him in this great institution.

I congratulate him.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. Mr. President, I am pleased this morning to have the opportunity to take part in the swearing-in ceremony for a very outstanding Nebraskan who is the brand new U.S. Senator.

I just heard over there some of the younger Members of the Senate who indicated that, I believe, DAVID KARNES is by 8 days the youngest Member of the U.S. Senate.

That allows some of our more younger Members to finally move up in seniority in the U.S. Senate. So, for that, they thank you.

I am looking forward to working with my colleague in representing our great State. We have lots of problems, and we will be working on them.

I also want the Senate to know that I went as far as I could possibly go this morning in true bipartisan spirit. Without even checking with the majority leader, I said we would be pleased to seat him on this side of the aisle. He respectfully declined, which indicates, I think, that he already has learned a great deal about the U.S. Senate. I am looking forward to working with him.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DOLE. Mr. President, let me echo what was said by the distinguished majority leader and the distinguished Senator from Nebraska, Senator EXON.

Let me also congratulate the Governor of Nebraska, Gov. Kay Orr. We are honored to have her in our presence this morning. She has made an outstanding choice. We also welcome our colleagues from the House side, Congressman BEREUTER and Congresswoman SMITH.

I have told our distinguished and most junior colleague of the body that as No. 100, you do not have any extra duties, but you have no privileges, either.

We will be working together. It will be exciting in the next few days. I think, as we have indicated privately, you do have some big shoes to fill. Ed Zorinsky was a man respected by all of us. He was our friend. We certainly will miss him.

But I think your interests and Ed's interests and Senator EXON's interests are pretty much the same.

I have indicated to the distinguished majority leader that perhaps somehow we can work out a seat for Senator KARNES on the Agriculture Committee. I know that has been a Nebraska tradition for a long time. I hope we are able to accomplish that.

In any event, we certainly welcome you to this distinguished group.

I have asked Senator BYRD to check and see what number I was. I never thought of your being No. 1,782, but it is an interesting bit of information.

So welcome to the U.S. Senate. We certainly look forward to working with you.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

MORATORIUM ON ASSISTANCE FOR NICARAGUAN DEMOCRATIC RESISTANCE

Mr. BYRD. Mr. President, the Senate will shortly adjourn over until Tuesday. I wonder if the distinguished Republican leader would be agreeable to our proceeding now with the next step in connection with the joint resolution that came over from the House without waiting until the conclusion of morning business today.

Mr. DOLE. Yes.

The PRESIDING OFFICER. The clerk will read House Joint Resolution 175 for the second time.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 175) to impose a moratorium on the United States assistance for the Nicaraguan democratic resistance until there has been a full and adequate accounting for previous assistance.

Mr. BYRD. Mr. President, this being the second reading, I object to any further proceedings on this measure at this time.

The PRESIDING OFFICER. Objection having been heard after the second reading, the joint resolution will be placed on the calendar.

ROUTINE MORNING BUSINESS

Mr. BYRD. Mr. President, may we now proceed with morning business?

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business for a period not to exceed 30 minutes, with statements therein limited to 5 minutes each.

SUPPORT FOR PRESIDENT'S DEFENSE BUDGET

Mr. WARNER. Mr. President, on February 22, the Washington Post featured a front page article entitled "GI's Waiting for New War Machines," which described field training of the U.S. Army's 1st Infantry Division at Fort Riley, KS. I ask unanimous consent that this article be printed in the RECORD following my remarks. The essence of the article is that these units were equipped with outdated M-60 tanks and M-113 personnel carriers rather than the Army's new M-1 tank and M-2/M-3 Bradley fighting vehicle.

The facts in this story are basically correct. While the Reagan buildup is the most ambitious undertaken in modern peacetime history, we are by no means close to completing the modernization of our Armed Forces. The Army, in fact, has completed only about one-third of its moderization program.

One should not conclude, however, that we have not made significant progress nor that the money has been wasted. Recent defense budgets have been structured to achieve an appropriate balance between modernization and readiness.

A large portion of the budget has gone into recruiting and sustaining high quality soldiers who are fully capable of operating sophisticated equipment.

In the Army alone 55 combat arms battalions have been added to Active and Reserve Forces since 1980 with no increase in Active Army end strength.

Special Operating Forces [SOF] have been similarly improved since 1980 with the addition of a Ranger regimental headquarters and a Ranger battalion, plus increased capabilities in Special Forces, psychological operations and SOF aviation—again with no increase in Active Army end strength.

War reserve stocks in Europe have been increased substantially over 1980 levels. The percentage of our goals for onhand stocks of munitions, major items and secondary items have increased by factors of 11 percent, 23 percent, and 28 percent, respectively.

Stocks of prepositioned overseas materiel configured in unit sets [POMCUS] have doubled since 1980.

Troop and maintenance facilities have been upgraded and the operating tempos of combat units have been increased.

Despite these indications of progress in readiness, the rate of modernizing our Armed Forces has been slowed simply because the total defense budgets approved by the Congress over the past 2 years have been inadequate. We must continue to push for timely modernization of the remaining two-thirds of our Army as well as continuing the modernization of our Navy, Marine Corps, and Air Force.

The Armed Services Committee has recently voted to support the President's Defense budget request and sent to the chairman of the Budget Committee letters expressing support for the President's request of $312 billion for defense. Some in the Congress, I am sure, will consider this budget request too high. On the contrary—even if approved at the requested level, it is not enough to continue the modernization of our forces at a reasonable rate. Within this budget proposal of $312 billion, it is necessary to reduce the production rates for M-1 tanks from 840 to 600 tanks per year, Apache helicopters from 101 to 67 aircraft per year, and to terminate the Army's AHIP Scout helicopter program.

Any reduction from the President's request will delay further the modernization efforts which we began several years ago. The soldiers at Fort Riley as well as our servicemen and women throughout the world deserve the finest equipment available. We should not expect them to go to war nor to train for combat with less than that.

However, the soldiers at Fort Riley, KS, and those elsewhere in the Army will continue to train and prepare for war with equipment that is rapidly becoming obsolete unless we provide sufficient resources to continue a reasonable modernization program for our Armed Forces.

I therefore urge my colleagues to support the President's budget request for defense and resist the temptation to make the kinds of precipitous cuts that have been made the past few years in the Defense budget.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GI'S WAITING FOR NEW WAR MACHINES

(By Molly Moore)

FORT RILEY, KAN.—Huddled against the biting winter wind, Spec. 4 Kevin Jackson and his company climbed into their tanks and personnel carriers and gunned the motors, ready for a day of field exercises. Engines growled, thick black smoke spewed across the icy knoll—and nothing moved. The fleet of hulking machines sat motionless glued to the frozen Kansas muck.

"If there was a war in Kansas, we'd be stuck on this hill," Jackson muttered as he used a hammer and screwdriver to chip ice clumps of mud from the metal treads of an aging M113 armored personnel carrier.

Six years after President Reagan launched his $2 trillion effort to modernize the nation's armed forces—with special emphasis on a major infusion of new equipment and weapons—many soldiers say they've only read about the promised new hardware in magazines or seen it in television commercials promoting Army careers.

The Army, which originally estimated its modernization program would peak by 1987, has completed about a third of its upgrading and estimates that it will not complete the buildup until well into the next decade. The much-publicized modernization also is behind schedule in the Air Force, Navy and Marine Corps, officials said. Military leaders said the completed modernization also will fall short of initial expectations in all of the services.

Although the armed forces have been successful in efforts to improve the quality of their troops with better pay and benefits and have increased military readiness in some areas—especially the front-line units in West Germany—much of the modernization has not reached Army posts and naval and air bases.

In many cases, weapons and equipment—the basic hardware of war—are more representative of the battlefields of Vietnam than the combat arena of the future.

Fort Riley's 1st Division, which would be among the first Army units to deploy to Europe in a crisis, was scheduled to complete most of its modernization effort by 1988. As of early January, with about 8 percent of the new weapons and equipment it was promised, Fort Riley had barely begun to modernize. Some battalions will not get their new equipment for several years.

"From a firepower standpoint, we're where we were in 1975 or '76—that's the reality," said John Denning, director of Fort Riley's forces modernization office, adding, "It's especially frustrating when a soldier

sees something new and says, 'Why can't we have it?' "

Military officials blame the snail's pace on a tangled combination of budget squabbles, changes in military priorities and nagging development and performance problems with new equipment.

It is in the Army, of all the services, that the problems are perhaps most visible. The Army was allocated $415 billion from 1980 to 1986 for its improvement programs. The Congressional Budget Office has reported that the Army has fallen short of its goals in many areas despite 10 percent annual budget increases in the early years of the Reagan buildup.

Army officials describe Fort Riley, which sprawls across more than 97,000 acres of treeless eastern Kansas hills, as an accurate snapshot of the Army's modernization. Home to mechanized infantry and armored battalions that periodically rotate to duty in West Germany, Fort Riley is listed as being about midway in the modernization priorities.

M60 TANKS IN USE SINCE THE '60S

Fort Riley began receiving the first of its major new weapons systems, the M1 Abrams tanks, last month, almost two years after post officials said they were first told they'd get the tanks. The powerful, sophisticated tanks, which will not be assigned to companies until the end of March, will replace the M60 tanks that have been in service since the early 1960s.

Many of the soldiers at Fort Riley are assigned to tanks, personnel carriers, helicopters and other equipment that was put into service long before the GIs were born. Some said they were trained on the newer, more sophisticated equipment during their initial Army training or during rotations to West Germany, only to be assigned and retrained on aging, less capable equipment at Fort Riley.

"These are dinosaurs," Lt. Tom James groused as he clambered aboard the M60 tank he had just run through a practice maneuver.

Minutes earlier, his company commander, Capt. William Kelso, stood in a tower squinting through binoculars at an M60 that had just broken down on the snow-dusted practice range because of a hydraulics problem. They're chomping at the bit [for the new tanks]," Kelso said. "These are at least a generation old. . . . The wires only last so long before you start having electrical problems."

In addition to delays in receiving the M1 tank fleet, which will not be fully operational for 18 more months, Fort Riley is not scheduled to get the new Bradley Fighting Vehicle to replace its old M113 armored personnel carriers until 1991, and some post officials are doubtful about that date.

The M1 tank and the Bradley, which is faster, more powerful and more technologically advanced than the smaller M113, are considered the cornerstones of the Army's modernization. In many battalion-level units, modernization can hinge on one of those major systems.

For Lt. Col. Joseph G. Terry Jr.'s 2nd Battalion, 16th Infantry—a mechanized infantry unit—that essential system is the Bradley Fighting Vehicle, "When I'll get it, I don't know," said Terry, who took over the battalion 11 months ago. "First it was '87, then '88, '89. . . . We have NCOs [noncommissioned officers] and officers coming out of school ready to train with the Bradley, but we don't have it."

Terry's battalion, part of the 1st Mechanized Infantry Division (which has its headquarters at Fort Riley), has 742 soldiers. The battalion is divided into six companies: four infantry units, an antitank company and an administrative headquarters company.

Not only have some equipment allotments been delayed, others have been cut sharply. Fort Riley will receive about one-fourth the new Blackhawk utility helicopters originally planned for delivery, according to forces modernization chief Denning. In a few cases, the cutbacks will be slightly offset by other new weapons systems, such as the Apache attack helicopter now scheduled for delivery to Fort Riley between 1991-93, according to Denning.

The delays and juggling of equipment are the results of budget cuts by Congress, continuing changes in the way the Pentagon chooses to deploy its weapons and soldiers, and unexpected performance problems with new equipment.

Defense Secretary Caspar W. Weinberger is quick to blame Congress for slashing his original budget requests: "If we had more, we could do better. . . . We'd like to order at more economic rates of production—840 tanks instead of 600. We'd like to get more of the Bradleys, more ammunition. When you have the totals reduced you have to satisfy as many of the urgent needs as you can."

In its report, the Congressional Budget Office noted, "The Army would be unable to meet all of its goals—or even come near meeting them—if its budget does not increase in real terms."

CHANGING PRIORITIES AFFECT SUPPLY

But Defense Department officials concede that the problems are far more complex than money alone. Reagans military priorities have changed significantly over the last six years. His Strategic Defense Initiative (SDI) did not exist when the military modernization efforts were drafted six years ago.

The military's internal priorities also change from year to year, frequently turning weapons allotments into a chessboard of moves and countermoves. The Pentagon's first priority in the modernization effort is its front-line forces in Western Europe. Troops in the continental United States generally have been modernized in order of their expected rates of deployment during emergencies overseas. In some instances, that means a reserve unit coupled with an early deployment active-duty unit will be upgraded long before some active-duty units further down the deployment list.

"We outfit our units generally with the rule that the first to fight are the first to be equipped," said Lt. Gen. Louis C. Wagner Jr., the Defense Department's deputy chief of staff for research, development and acquisition.

Some delays, however, have been caused by faulty equipment, inadequate testing or production problems. Early problems in the development of the Bradley Fighting Vehicle and the M1 tanks contributed to initial delays in fielding the equipment, according to Wagner. Officials withheld the Patriot air defense missile for up to a year because it "was less reliable than we thought it should have been," he said.

Other key components of the equipment modernization program, such as the SINCGARS radio system that is expected to dramatically improve battlefield communications, have been plagued by reliability problems, according to Wagner. That could push back even further the 1991-93 scheduled delivery dates for the high-technology communications equipment at Fort Riley, according to officials.

Soldiers in the field, however, often receive little explanation for why they don't have the weapons and equipment they have heard about or used before they were assigned to posts such as Fort Riley.

"They have been training to fix a certain piece of equipment," said Denning, noting that if the equipment is not in use at Fort Riley the soldier eventually will have to "have a refresher course to bring him back up to speed from two years ago."

The delays translate into lower war readiness rates and hamper the Army's new air-land battle war plans that concentrate on training units for greater coordination between air and land forces.

The rate of modernization also affects a battalion's readiness ratings, the measure of its ability to go to war and win. The statistics for Lt. Col. Terry's 2nd Battalion point to the uneven results of the modernization.

While the battalion's personnel strength and some supplies have increased, there has been a decline in equipment readiness and percentages of senior-level officers. Other areas, such as the percentage of qualified specialists assigned to the unit, have shown little or no change despite the increased funding.

The most dramatic and consistent improvement in the Army since 1980 has been the quality of the soldiers. Today's recruits are better-educated, better-behaved, more easily trained and more committed to their jobs than their counterparts of six years ago, according to Pentagon statistics as well as field commanders.

Military leaders attribute the improvement in the quality of recruits to a combination of better pay and education benefits, a dimming of the antimilitary sentiment that followed the Vietnam war and rapid swings in the nation's economy.

EDUCATED SOLDIERS ARE SIGNING UP

"Johnny is a cut above the Johnny that came in in 1980," said Col. Mike Shaller, Fort Riley's chief of staff.

In Terry's battalion, 91 percent of all soldiers have a high school diploma, a mirror of the Army-wide average and almost double the Army's average of 54 percent in 1980.

The improvement in the education levels of the soldiers has been critical to the Army's efforts to meet the increasingly taxing human demands created by its more sophisticated and complicated equipment. Although modern equipment in many cases requires far more training and knowledge, Army officials said the higher education levels of enlistees have kept it from having to dramatically lengthen the time soldiers must devote to training on new equipment.

Army officials said that they are far from being satisfied with the quality of their troops, however. The Army still ranks behind all other armed services in the education levels of its enlistees. Last year, despite the number of high school graduates, 28 percent of the soldiers in Terry's battalion were rated as being deficient in reading and writing and were recommended for enrollment in the Army's basic English courses.

The improved education level of the soldiers, coupled with a major shift in the composition of the Army from primarily bachelor troops to substantially larger numbers of married men and women, also has contribut-

ed to declines in disciplinary problems and crime rates, according to officials.

"The number of married soldiers has changed the nature of the Army," said Fort Riley's Shaller. "The soldiers are much more responsible. [On a recent] weekend there was no report of a soldier going to a local bar and punching anybody out."

At the same time, these married and better-educated soldiers have imposed tougher demands on the Army and its leaders. On the training field, soldiers are more aggressive and demanding of the commanders, forcing military officials to be more selective in the men and women they choose to lead squads and platoons and companies.

"Young men and women today want to know more the 'why' than they used to," Shaller said. "Be prepared to explain the big picture. In training, expect a lot of questions."

The soldiers are no less demanding in the quality of life they expect the Army to provide them. They want more regular working hours, improved housing and better services and benefits. Those expectations are greatest among the married troops. Young military families are taxing day-care and family services as never before.

While the Army has addressed some of the demands through changes in leadership attitudes and superficial improvements in housing and family services, many of the concerns have been barely touched by the modernization efforts at posts such as Fort Riley.

The post child-care center's capacity of 176 has remained unchanged in the last six years. In December, there were 143 children on its waiting list.

At any time, 1,400 to 1,500 Army families are waiting to obtain housing on post, according to Fort Riley officials. The delays can last from one to 12 months depending on the soldier's rank. Almost half of the families on the waiting list in December were living in housing considered substandard or too distant from Fort Riley, according to the post's housing office.

Fort Riley has built no new housing for married soldiers since the Reagan modernization effort began. The primary contribution of the modernization has been to upgrade some housing and to start a program that gives civilian landlords incentives to improve their housing for military families.

"It's just as difficult for them to find housing this year as in 1980," one housing official said. "The difference is, better housing is available."

TERRY: "I AM NOT A WORKAHOLIC"

In contrast, the post has 1,059 vacancies in its bachelor's quarters because of the decline in the numbers of single soldiers living on post since 1980, when the units were packed. Of the bachelor units still in use, however, 242 are substandard with inadequate bathroom facilities or other major problems, according to Lt. Col. Steven Whitfield, director of Fort Riley's engineering and housing office.

But there have been substantial changes in the approach of military leaders toward their soldiers. Lt. Col. Terry, who assumed command of the 2nd Battalion last March, issued an unusual "philosophy of command" to his troops shortly after he arrived. It included statements such as: "I am not a workaholic. Mission comes first, but you will never be evaluated on how long you work. How much you do is much more important. . . . I will take leave and time off: so will you."

Still, both soldiers and officers express continuing frustration over what many of them consider the most important aspects of military life: the equipment they spend their days shooting or driving or flying or repairing.

"If there's something new on the block, you want to play with it," Terry said. "I say to the platoon leaders, 'I would like to have the Bradley, too, but we don't have it. It's coming. If you get yourself immersed in your platoon, you won't concern yourself as much with it.' "

TRIBUTE TO SISTER M. TERESITA BERRY

Mr. BRADLEY. Mr. President, as we prepare to celebrate St. Patrick's Day this year, I would like to call attention to an outstanding New Jerseyan, Sister M. Teresita Berry, who has recently been selected "Irish Woman of the Year" by the St. Patrick's Day Parade Committee of Jersey City.

Sister Teresita has a distinguished record of community service. During her 61-year teaching career, she has passed on a wealth of knowledge to hundreds of students throughout the State. In 1983, she was selected by the Jersey Journal to receive the Woman of Achievement Award for her work in the community.

Although Sister Teresita is now semiretired, at 82 years of age she continues to remain active in community service, volunteering her time whenever possible. One very successful program that she has been directing for the past 11 years is called "T for C," "Technology for Children." In the basement of the convent where she resides, Sister Teresita conducts classes in sewing, woodworking, typing, and elementary computer science.

For the past 15 years, she has been active with the senior citizens in Jersey City. Twice a week she conducts an aerobic exercise class for interested seniors, and once a month she visits the patients at the geriatric hospital. She also visits other sick and homebound persons whenever possible.

We can all learn a lesson from Sister Teresita's life. Her endless energy, her compassion, and her desire to help others are all values worthy of striving for, and I think it is fitting that she be honored today for her contributions to her community. Because of Sister Teresita, Jersey City is a better place to live.

TRIBUTE TO THE LATE EDWARD ZORINSKY OF NEBRASKA

Mr. DODD. Mr. President, I was greatly saddened by the untimely death of our good friend and colleague Ed Zorinsky. To his wife, Cece, and his family, I express my deepest condolences.

In the Senate, Ed was neither a showman nor a follower. Quietly and effectively, he allowed his personal judgments and insights to guide him through the mine field of politics and the mire of Senate business. He had an uncanny capacity, most notably as ranking minority member of the Agriculture Committee, of forging consensus policy from very divergent views. I know that considerable time was spent reflecting on his contributions and his style during a meeting of that committee this week.

Back home in Nebraska he was an attentive and concerned representative of all of his constituents. In a well known act of rebellion he took his office door off of its hinges saying: "I never close my door on anything." He has influenced major farm legislation of real consequence to the farmers of his State and others, at a time when those folks are less than happy with elected officials in Washington.

I perhaps knew him best in the context of the Foreign Relations Committee, where he was chairman of the Subcommittee on Western Hemisphere Affairs until serving as ranking minority member there when our colleagues on the other side of the aisle controlled the institution.

Because of Ed's work in Latin America, and my longstanding interest in issues of import to that region, we developed a closer relationship than might otherwise have been the case. When Democrats regained control of the Senate this year, I talked to Ed about subcommittee assignments, and expressed to him my very deep personal interest in assuming the chairmanship of the Subcommittee on Western Hemisphere Affairs. He had been at the helm for a long tme and had a deep interest and thorough knowledge of the issues confronting Latin America. But Ed Zorinsky responded to my appeal by setting seniority aside, and for reasons of personal accommodation and consideration, he acceded to my request. It was an act of great generosity.

That is the kind of Senator Ed Zorinsky was. He was a good friend, a dear colleague, and there will always be a soft spot in my heart and all of our hearts where his memory will remain bright.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations,

which were referred to the Committee on the Judiciary.

(The nominations received today are printed at the end of the Senate proceedings.)

PRESIDENTIAL APPROVALS

A message from the President of the United States announced that on March 12, 1987, he had approved and signed the following enrolled joint resolution:

S.J. Res. 20. Joint resolution to designate the month of March 1987, as "Women's History Month."

S.J. Res. 46. Joint resolution declaring 1987 as "Arizona Diamond Jubilee Year."

MESSAGES FROM THE HOUSE

At 10:28 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1505. An act making technical corrections relating to the Federal Employees Retirement System; and

H.R. 1562. An act to make permanent certain authority of the National Credit Union Administration.

The message also announced that pursuant to the provisions of section 4(a) of Public Law 96-114, as amended, the Speaker appoints Mr. LANTOS as a member of the Congressional Award Board, on the part of the House.

The message further announced that pursuant to the provisions of section 601 of Public Law 99-603, the minority leader appoints as members of the Commission for the Study of Migration and Cooperative Economic Development, the following from the private sector: Mr. Diego C. Ascencio, of Washington, DC; Ms. Donna Alvarado, of Washington, DC; and Mr. Eric H. Biddle, Junior, of Arlington, VA.

The message also announced that pursuant to the provisions of section 203 of Public Law 99-660, the Speaker appoints Mr. ROWLAND of Georgia as a member of the National Commission to Prevent Infant Mortality, on the part of the House.

The message further announced that pursuant to the provisions of section 304 of Public Law 99-603, the Speaker appoints Mr. Russell Williams, of Visalia, CA, as an additional member to the Commission on Agricultural Workers, from the private sector.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 1562. An act to make permanent certain authority of the National Credit Union Administration; to the Committee on Banking, Housing, and Urban Affairs.

MEASURES PLACED ON THE CALENDAR

The following joint resolution was read the second time and placed on the calendar:

H.J. Res. 175. Joint resolution to impose a moratorium on United States assistance for the Nicaraguan democratic resistance until there has been a full and adequate accounting for previous assistance.

MEASURES HELD AT THE DESK

The following bill was ordered held at the desk by unanimous consent until the close of business March 17, 1987:

H.R. 1505. An act making technical corrections relating to the Federal Employees Retirement System.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-699. A communication from the Secretary of Agriculture and the Secretary of the Army transmitting, pursuant to law, notice of the intention of the Departments to interchange jurisdiction of civil works and Forest Service lands at Laurel River Lake in Kentucky; to the Committee on Agriculture, Nutrition, and Forestry.

EC-700. A communication from the Secretary of Agriculture transmitting a draft of proposed legislation to change certain price levels and supports for wheat, feed grains, upland cotton, and rice; to the Committee on Agriculture, Nutrition, and Forestry.

EC-701. A communication from the Acting Secretary of Agriculture transmitting a draft of proposed legislation to improve the Commodity Credit Corporation's export programs; to the Committee on Agriculture, Nutrition, and Forestry.

EC-702. A communication from the Secretary of Agriculture transmitting a draft of proposed legislation to increase the borrowing authority of the Commodity Credit Corporation; to the Committee on Agriculture, Nutrition, and Forestry.

EC-703. A communication from the Secretary of Agriculture and the Secretary of the Army transmitting, pursuant to law, notice of the interchange of jurisdiction over civil works and Forest Service lands at Lake Ouachita, Arkansas; to the Committee on Agriculture, Nutrition, and Forestry.

EC-704. A communication from the Director of the Office of Management and Budget transmitting, pursuant to law, a report on the reapportionment of certain appropriated funds for Radio Free Europe/Radio Liberty, Inc.; to the Committee on Appropriations.

EC-705. A communication from the Secretary of Agriculture transmitting, pursuant to law, a report on two overobligations of apportioned authority; to the Committee on Appropriations.

EC-706. A communication from the Secretary of the Treasury transmitting, pursuant to law, a report on an overobligation of an apportionment; to the Committee on Appropriations.

EC-707. A communication from the Assistant Secretary of Defense transmitting, pursuant to law, a secret report on 99 Selected Acquisition Reports; to the Committee on Armed Services.

EC-708. A communication from the Director of the Defense Security Assistance Agency transmitting, pursuant to law, a confidential report on a foreign military assistance sale to Korea; to the Committee on Armed Services.

EC-709. A communication from the General Counsel of the Department of Defense transmitting a draft of proposed legislation to authorize supplemental appropriations for the Department of Defense for fy 1987; to the Committee on Armed Services.

EC-710. A communication from the Chairman of the Board of Directors of the Panama Canal Commission transmitting a draft of proposed legislation to convert the Commission from an appropriated-fund agency to a revolving-fund agency; to the Committee on Armed Services.

EC-711. A communication from the Principal Deputy Assistant Secretary of Defense transmitting, pursuant to law, a report on the value of property, supplies and commodities provided by the Berlin Magistrate for the quarter ended December 31, 1986; to the Committee on Armed Services.

EC-712. A communication from the General Counsel of the Department of Defense transmitting a draft of proposed legislation to authorize appropriations for the Department of Defense for fiscal years 1988 and 1989; to the Committee on Armed Services.

EC-713. A communication from the President and Chairman of the Export-Import Bank of the U.S. transmitting, pursuant to law, a report on loan, guarantee, and insurance transactions by the Bank with Communist countries during January 1987; to the Committee on Banking, Housing, and Urban Affairs.

EC-714. A communication from the Secretary of Transportation transmitting, pursuant to law, a report on the effect of airline deregulation on air safety; to the Committee on Commerce, Science, and Transportation.

EC-715. A communication from the Secretary of Transportation transmitting a draft of proposed legislation to authorize appropriations for maritime programs for fiscal years 1988 and 1989; to the Committee on Commerce, Science, and Transportation.

EC-716. A communication from the Secretary of Commerce transmitting, pursuant to law, a report on foreign fishing fees assessed by the U.S. on foreign nations; to the Committee on Commerce, Science, and Transportation.

EC-717. A communication from the Administrator of the Federal Aviation Administration transmitting, pursuant to law, a report on airliner cabin air quality and safety; to the Committee on Commerce, Science, and Transportation.

EC-718. A communication from the Secretary of Commerce transmitting a draft of proposed legislation to repeal the Anadromous Fish Conservation Act; to the Committee on Commerce, Science, and Transportation.

EC-719. A communication from the Assistant Secretary of Energy transmitting, pursuant to law, a report on the effectiveness of including electric vehicles in the calculation of average fuel economy standards; to the Committee on Commerce, Science, and Transportation.

EC-720. A communication from the Secretary of Transportation transmitting, pursuant to law, a report on truck occupant pro-

tection; to the Committee on Commerce, Science, and Transportation.

EC-721. A communication from the Assistant Vice President of AMTRAK transmitting, pursuant to law, a report on AMTRAK's annual review of routes for fiscal year 1987; to the Committee on Commerce, Science, and Transportation.

EC-722. A communication from the Secretary of Transportation transmitting, pursuant to law, a report on the effects of airport defederalization; to the Committee on Commerce, Science, and Transportation.

EC-723. A communication from the Secretary of Transportation transmitting, pursuant to law, the annual report on the administration of the Pipeline Safety Act for 1985; to the Committee on Commerce, Science, and Transportation.

EC-724. A communication from the Secretary of Transportation transmitting, pursuant to law, a report on the automotive fuel economy program; to the Committee on Commerce, Science, and Transportation.

EC-725. A communication from the Administrator of the Energy Information Administration transmitting, pursuant to law, the Administration's annual energy outlook for 1986; to the Committee on Energy and Natural Resources.

EC-726. A communication from the Executive Director of the U.S. Holocaust Memorial Council transmitting a request that the President pro tempore fill two vacancies on the Council; to the Committee on Energy and Natural Resources.

EC-727. A communication from the Secretary of Energy transmitting, pursuant to law, a report on emerging clean coal technologies; to the Committee on Energy and Natural Resources.

EC-728. A communication from the Secretary of Transportation transmitting, pursuant to law, a report on the administration of the Deepwater Port Act; to the Committee on Environment and Public Works.

EC-729. A communication from the Administrator of the General Services Administration transmitting a draft of proposed legislation entitled "Public Buildings Amendments of 1987"; to the Committee on Environment and Public Works.

EC-730. A communication from the General Counsel of the Department of the Treasury transmitting a draft of proposed legislation to authorize appropriations for the Customs Service for fiscal years 1988 and 1989; to the Committee on Finance.

EC-731. A communication from the Secretary of Health and Human Services transmitting, pursuant to law, a report on the medicare information transfer; to the Committee on Finance.

EC-732. A communication from the Secretary of Health and Human Services transmitting, pursuant to law, a report on prenatal care for eligible low-income women; to the Committee on Finance.

EC-733. A communication from the Assistant Secretary of State transmitting, pursuant to law, a report on a travel advisory issued for Suriname; to the Committee on Foreign Relations.

EC-734. A communication from the Director of the Defense Security Assistance Agency transmitting, pursuant to law, a report on foreign military assistance customers with approved cash flow financing in excess of $100 million; to the Committee on Foreign Relations.

EC-735. A communication from the Assistant Secretary of the Army transmitting a draft of proposed legislation to authorize the Director of the USIA to provide DOD with photographs of military activities in Vietnam for purposes of developing military histories; to the Committee on Foreign Relations.

EC-736. A communication from the Administrator of the Agency for International Development transmitting, pursuant to law, a report on the progress in conserving biological diversity in developing countries; to the Committee on Foreign Relations.

EC-737. A communication from the Acting Secretary of State transmitting a draft of proposed legislation to authorize additional development and security assistance programs for fiscal year 1988; to the Committee on Foreign Relations.

EC-738. A communication from the Deputy Director of the CIA transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-739. A communication from the Chairman of the Federal Home Loan Bank Board transmitting, pursuant to law, a report on the Board's accounting system for 1986; to the Committee on Governmental Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mrs. KASSEBAUM (for herself and Mr. GORE):

S. 746. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit applicants to file abbreviated applications for registration of pesticides or new uses of pesticides under certain circumstances, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HOLLINGS (for himself, Mr. BREAUX, Mr. INOUYE, Mr. FORD, Mr. RIEGLE, Mr. EXON, Mr. GORE, Mr. ROCKEFELLER, Mr. PRESSLER, Mr. KASTEN, Mr. TRIBLE, Mr. NUNN, Mr. PRYOR, Mr. BUMPERS, Mr. HEFLIN, Mr. BINGAMAN, Mr. DECONCINI, Mr. SASSER, and Mr. NICKLES):

S. 747. A bill to establish a motor carrier administration in the Department of Transportation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. PRESSLER:

S. Con. Res. 31. Concurrent resolution commending the Czechoslovak human rights organization Charter 77, on the occasion of the 10th anniversary of its establishment, for its courageous contributions to the achievement of the aims of the Helsinki Final Act; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. KASSEBAUM (for herself and Mr. GORE):

S. 746. A bill to amend the Federal Insecticide, Rodenticide, and Fungicide Act to permit applicants to file abbreviated applications for registration of pesticides or new uses of pesticides under certain circumstances, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

PESTICIDE PRICE COMPETITION ACT

Mrs. KASSEBAUM. Mr. President, the legislation I am offering, on behalf of myself and Mr. GORE, eliminate the data compensation provisions of the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA]. In addition, it provides for the use of an abbreviated application for registration of generic pesticides. Enactment of this amendment would, in effect, place manufacturers of generic pesticides on equal footing with generic pharmaceutical manufacturers.

My purpose in offering this measure is simply to cut production costs for farmers. I think there is little understanding of what these costs have become. This could provide savings in the range of $200 to $500 million annually in the pesticide bills of American farmers. These savings would be achieved by making it easier and quicker to bring generics onto the market.

Let me emphasize that this bill is not intended to deprive manufacturers who originate pesticides from receiving an ample return on their investment. Current law recognizes the substantial research and development costs involved in pesticide production by providing a 17-year exclusive marketing right over registered pesticides. Manufacturers are eligible for research and development tax deductions and credits as well.

I believe these provisions offer adequate incentives for innovation. Yet, the truth is that barriers to market entry do not end with the expiration of a patent when it comes to pesticides. In short, at the same time we have gone to great lengths to protect the investments of original manufacturers, we have done nothing to advance the interests of pesticide consumers who would benefit from greater generic competition.

When we granted patent term extension to pharmaceutical products in 1984, we at the same time made it easier for generic products to come onto the market. Rather than duplicating tests of a drug, a generic manufacturer now only has to prove to the Food and Drug Administration that it can produce an identical chemical compound in order to begin marketing it.

This general approach has also been endorsed by the administration. In a March 10, 1986, letter to Senator STROM THURMOND, Health and Human Services Secretary Otis Bowen strongly recommended that legislation providing for patent term extension of veterinary drugs be amended. The Sec-

retary proposed that a provision be added to enable manufacturers to obtain premarket approval of generic drugs without having to duplicate the safety and effectiveness studies required for approval of the original drug. Mr. President, I ask unanimous consent that the full text of Secretary Bowen's letter appear in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mrs. KASSEBAUM. I would like to explain briefly how onerous the road blocks are for the production of generic farm chemicals. Current law requires that an enormous amount of health and safety data be submitted to the Environmental Protection Agency [EPA] in order to register a pesticide product. Without EPA registration, a pesticide may not be put on the market. A generic producer has two options for meeting this requirement.

One, the producer can generate his own data—which takes anywhere from 5 to 7 years. In so doing, the generic producer is duplicating work that has already been done.

The producer's second option is to buy the right to cite the data previously submitted to EPA by the originator of the product. The amount of the data compensation due is determined by a system of binding arbitration which was setup in the 1978 amendments to FIFRA.

The law does not contain any explicit standard for determining compensation. Thus, the only guidance we have as to the effects of the arbitration process is the single case which has been completed under it—Stauffer Chemical Co. versus PPG Industries (1983).

In that case, the arbitration award to the original manufacturer—Stauffer Chemical—amounted to 50 percent of the cost of the data plus a 10-year royalty. The royalty amount was intended to represent the value to the generic manufacturer of being able to enter the market much sooner than would otherwise be possible. In all, the value of the award is estimated to exceed $15 million—an amount five times the actual cost of producing the data.

Commenting on this case, an analyst with the Congressional Research Services notes:

> This award was so large that it could effectively foreclose secondary registrants by making the cost of entering the market so uncertain that few if any firms would be willing to take the risk, and for smaller firms, making the up-front costs so high they could scarcely take the risk.

This system simply does not make sense. Generic drug manufacturers have never had to pay for data which has already been filed with the Food and Drug Administration. Why should pesticides be different?

Clearly, this situation works against the American farmer who is trying to cut costs and operate at maximum efficiency. The monopoly held by original pesticide producers extends long beyond the expiration of a patent, as a potential generic competitor must either spend 5 to 7 years duplicating data or debate whether it is worth the financial risk to purchase that data.

Either way, the bottom line is that farmers pay more for pesticides. Mr. President, I ask unanimous consent that an article on this subject by George Anthan of the Des Moines Register be printed in the RECORD along with an article by Stephen Fehr in the Kansas City Times following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mrs. KASSEBAUM. Farmers spend about $3.4 billion on pesticides every year. Competition within the industry would significantly reduce prices, as illustrated by past experience when generics have come onto the market. The price of Phostoxin, for example, has dropped nearly 20 percent since a generic version became available in 1982. Treflan has seen a price drop of nearly 25 percent since a generic appeared on the market last year.

It is particularly important that we act now to address this situation. Over the next 5 years, 21 pesticides widely used by American farmers will come off patent. These pesticides constitute about 43 percent of the entire pesticide market.

Congress, by deciding to inject a healthy dose of competition into the pesticide industry, could give the farmer a real break. And, this could be done without further drain on the U.S. Treasury.

EXHIBIT 1

THE SECRETARY OF
HEALTH AND HUMAN SERVICES,
Washington, DC, March 10, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: There is pending before the Committee, S. 1093, a bill "To amend the patent law to restore the term of the patent in the case of certain products for the time of the regulatory review period preventing the marketing of the product claimed in the patent." We take this opportunity to inform you of our views on that bill. We understand that S. 1093 is scheduled for mark-up on March 11, 1986 before the Subcommittee on Patents, Copyrights and Trademarks.

Our views focus on S. 1093 as it would affect veterinary drugs, which are regulated by the Food and Drug Administration (FDA) under the Federal Food, Drug, and Cosmetic (FDC) Act, S. 1093 would authorize the restoration of patent time lost due to Federal premarket requirements for veterinary drugs, pesticides, and agricultural chemicals.

In summary, we support patent restoration for veterinary drugs, but urge the Committee to add an additional provision that would enable manufacturers to obtain Federal premarket approval to market generic versions of these drugs without having to duplicate the potentially costly and time-consuming safety and effectiveness studies that are required of pioneer manufacturers. Without such a provision, there would appear to no need for patent restoration since the current Federal requirement for duplicative testing would continue to serve as an effective economic barrier to competition even after the expiration of patents that would be restored by this legislation.

The Department of Health and Human Services traditionally has supported patent restoration for the products that require the premarket approval of FDA. These products often entail high development costs, the risk of failure and small potential markets. In addition, innovators typically lose years of patent exclusivity because of testing requirements and regulatory review. We are mindful of the paradox that the careful and time-consuming scientific review needed to confirm safety and effectiveness may be reducing initiatives to develop new veterinary drugs. Streamlining the regulatory process will help. However, the FDA premarket approval system must continue to be thorough enough of assure safety and efficacy even if that means living with a process that takes longer than we would ideally prefer. We want to encourage innovation, but not at the expense of safety. Consequently, we support patent extension for veterinary drugs as a means of encouraging innovative research.

Patent restoration would have little, meaning, however, if Federal regulatory barriers had the effect of preventing the marketing of virtually identical generic products after patents expire. Such a situation existed for human drugs until 1984, when the Congress enacted legislation that both extended patents associated with human drugs and removed regulatory barriers that effectively prevented the development of many generic human drugs. The situation still exists, however, for veterinary drugs.

Consequently, in addition to patent extension, we strongly support the enactment of an explicit statutory authority that would allow a manufacturer to market a generic version of a veterinary drug without having to duplicate the time-consuming and costly studies that are necessary to demonstrate that the original version of the drug is safe and effective. The generic manufacturer only would have to demonstrate in an "abbreviated" application for marketing approval to FDA that it is capable of manufacturing an equivalent product.

FDA presently allows abbreviated applications for generic versions of veterinary drugs that were approved before 1962, the year in which Congress amended the FDC Act to require that both human and veterinary drugs be shown to be effective as well as safe. A similar procedure has not been established for post-1962 veterinary drugs. As a consequence, the duplicative testing for safety and effectiveness that generic manufacturers must conduct for post-1962 drugs constitutes an effective economic barrier to their development. In this respect, the Federal drug approval process unwittingly serves as a quasi-patent whose term never expires.

We have concluded, therefore, that both patent restoration and an abbreviated approval procedure ought to be included in the same legislation so that they may be considered and, hopefully, enacted together.

We continue to believe that it is good public policy to link the two concepts in order to foster research for new products and at the same time encourage competition and lower prices. In our view, it would be unfair to consumers as well as to the industry as a whole if one were enacted but not the other or if a substantial time lag occurred between the enactment of both. We would be pleased to work with the Committee to add an abbreviated application provision to S. 1093.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program

Sincerely,

OTIS BOWEN,
Secretary.

EXHIBIT 2

[From the Des Moines Register, Sept. 14, 1986]

FARMERS' PURSE STRINGS MAY TIE UP CHEMICAL LEGISLATION

(By George Anthan)

The already shaky agreement over legislation to re-authorize the Federal Insecticide, Fungicide and Rodenticide Act could unravel because of an important sticking point involving farmers' pocketbooks.

The lengthy and complex debate in Congress over FIFRA, under which farm and garden chemicals are regulated, has involved representatives of the chemical industry and environmentalists, but farmers have a huge financial stake in the situation.

Negotiations have taken years, but a series of compromises this year involving the industry and environmental groups has cleared the way for both houses of Congress to take up the bill before they adjourn this fall.

The House and Senate Agriculture committees have approved versions of the new bill under which FIFRA would be extended for five years. The new law would require that pesticides must be "registered" by the Environmental Protection Agency and that some 600 pesticides in use when the original law was passed in 1971 must be tested for their health effects. The "re-registration" of these pesticides would be financed through fees paid by the manufacturers.

The controversy is over "data compensation," splitting the mostly big companies whose research brings pesticides into the market and the mostly smaller companies and cooperatives who later want to enter the market and produce the same pesticides as generic products at a lower cost to farmers.

Farmland Industries, Inc., a farm cooperative based in Kansas City, has estimated that over the next five years, patents on some 45 percent of pesticides now in use will expire and that if these products can be produced by generic manufacturers, the potential saving to farmers would range from $420 million to $500 million a year.

Tim Galvin, an aide to Congressman Berkley Bedell, whose subcommittee developed the House version of FIFRA, says the issue of how to compensate the big pesticide "innovators" is "very divisive, almost intractable."

The larger chemical companies pay for the research necessary to bring new pesticides into the market and to get them registered by the EPA. In return, they get a 17-year exclusive right to sell the products. Once the patent expires, other firms, in most cases smaller, can move in and produce the pesticides under "generic" labels.

But, under current law, companies seeking to enter the market with a pesticide on which the patent has expired have been forced to compensate the innovators more than five times their cost of generating the data filed with EPA.

Farmland Industries officials told Congress recently that "when a human drug comes off patent, for example, a generic producer has only to prove to the Food and Drug Administration that it is capable of producing an identical chemical compound and is then authorized to begin marketing. . . ."

But FIFRA provides that the question of how much a pioneering firm is to be compensated for the scientific data it generated to gain approval for the pesticide will be determined through binding arbitration. In a case involving Stauffer Chemical Co., the original developer of a product, and PPG Industries Inc., which wanted to enter the market, arbitrators gave Stauffer an award valued at almost $16 million, 90 times what PPG had considered reasonable.

The Congressional Research Service notes in a report that "this award was so large that it could effectively foreclose secondary registrants by making the cost of entering a market so uncertain that few firms would be willing to take the risk. . . ."

The Senate version of the FIFRA bill greatly pleases the large chemical companies because it allows patents on new pesticide products to be extended for up to five years, depending on how long the product was undergoing regulatory review by EPA. The Senate bill also gives smaller companies the right to begin health tests on such a pesticide up to two years before the patent expires.

The House bill includes some provisions for non-binding arbitration. But Farmland emphasizes that any new law that's passed should include a ceiling on the amount of compensation that could be paid to a company which developed a pesticide.

Farmland cites data showing dramatic drops in the prices of some pesticides that were produced under generic labels. The data show that Phostoxin, a product that has been produced generically since 1982, has dropped in price by almost 20 percent. Treflan has had generic competition since last year, Farmland stated, and has experienced a price cut of almost 25 percent.

In contrast, the cooperative contends, several leading pesticides that have no generic competition have had significant price increases in recent years.

[From the Kansas Times, Dec. 10, 1984]

GENERIC PESTICIDES GET A BOOST

(By Stephen C. Fehr)

WASHINGTON.—Kansas Sen. Nancy Landon Kassebaum, at the urging of Farmland Industries Inc. of Kansas City, is leading an effort in Congress to greatly expand the production of generic pesticides, a move that Farmland says could save farmers up to $500 million a year on pesticide bills.

But Kassebaum's proposal, as well as other more modest plans by other congressmen, has run into stiff opposition from 14 of the nation's largest chemical companies, which are a lucrative source of lawmakers' campaign money.

Furthermore, some of the big farm organizations, such as wheat and soybean growers and the American Farm Bureau Federation, have been lukewarm to Kassebaum's idea, in part because backers of the proposal say the large chemical companies funnel huge amounts of money to the farm groups in the form of seminars, awards and advertising in farm publications.

At stake in the fight over the proposal are billions of dollars in the U.S. agrichemical industry. Last year farmers, ranchers and other users bought $4 billion in pesticides, $2.6 billion in herbicides and $269 million in fungicides.

If Kassebaum's proposal passes, opponents say, as much as $5 billion a year in agrichemical sales would shift from the large chemical companies to generic producers such as Farmland because farmers would have more alternatives to name-brand chemicals, which usually cost more than generic pesticides.

"This (proposal) is not intended to deprive manufacturers who originate pesticides from receiving an ample return on their investment," said Kassebaum, who will push for Senate consideration of her plan when Congress reconvenes next month. "My purpose . . . is simply to cut production costs for farmers."

Under the current system, large agrichemical companies spend at least seven years and an average of $25 million on research and development of a new pesticide product. Part of that process involves registration with the U.S. Environmental Protection Agency.

In return for that investment, Congress gives the companies an exclusive right to sell the products for 17 years. The manufacturers also get tax breaks for their research.

When the 17-year patent expires, other companies may produce the same chemicals under generic labels.

But first, the smaller companies and cooperatives must obtain EPA registration. They do this by spending the seven or so years duplicating the research of the original manufacturer or by compensating the original manufacturer for the research data it submitted to the EPA.

Forced to choose between the two, the smaller companies and coops say they offer to pay for the data. The current law says that if the two companies can't agree on the amount to be paid, a federal arbitration panel determines it. In the one case decided since the law went into effect in 1978, the company wanting to produce the generic pesticide had to compensate the original manufacturer $15 million, or five times the actual cost of registering the chemical.

In the face of such large amounts, Kassebaum, working with Farmland officials, has proposed wiping out the requirement that the smaller companies pay the original manufacturers once the 17-year patent expires.

"This system simply doesn't make any sense," Kassebaum said. "Generic drug manufacturers have never had to pay for data which has already been filed with the Food and Drug Administration. Why should pesticides be different?"

She said the 17-year period and the tax breaks are adequate incentives to the large companies. In the next five years, she said, the patents of 21 pesticides, or 43 percent of the market, will expire, making the issue more urgent.

But opponents, who want to keep the current system, said the issue isn't as black and white as Kassebaum paints it.

For one thing, they said, some of the cooperatives such as Farmland, the largest U.S. farm supply co-op, are bigger than some of the chemical companies that produce pesticides. And they said the relative difference in costs to farmers, has been exaggerated.

"Generic competition will reduce the price of that particular product to the farmers," said Robert J. Fields, a lobbyist for FMC Corp., a large chemical concern based in Chicago. "But compared to the other costs a farmer has per acre, the chemical costs are relatively insignificant."

The large-chemical companies' main argument against Kassebaum's proposal is its potential to hurt the agrichemical industry, already mired in a slump partly because of spiraling research costs. They worry that the loss of compensation for their research would force more companies to pull out of the agrichemical business, giving foreign competitors a larger toehold in the U.S. pesticide market.

"In the long term, you'll reduce the incentive of manufacturers to do research and development to benefit the farmer," Fields said. "We think the best competition which benefits the farmer is among the patented manufacturers."

Mark A. Maslyn, a lobbyist for the American Farm Bureau Federation, the nation's largest farm organization, and Margie Williams, of the National Association of Wheat Growers, said farmers benefit from the large companies' research.

"The chemical industry will make the investment in research and development of better and safer products," Maslyn said. "Given the lack of return (under Kassebaum's and others' proposals), that investment won't be there, and the number of products the farmer has will be less efficient and less environmentally sound."

Still, Maslyn said, if the Farm Bureau were pressed to take a position, it probably would side with the generic producers because the resulting competition would lower farmers' costs. However, he said, the original manufacturers ought to be paid a reasonable amount by the generic producers for the manfacutuers' research data.

Though Kassebaum's proposal was backed by the American Agriculture Movement, the National Grange and the National Farmers Organization, its chances would be helped a great deal if such groups as the Farm Bureau and wheat growers endorsed it.

"The thing that will turn this is if a couple of commodity groups come in on our side," said Jerry Waters, a Washington lobbyist for Farmland.

Farmland will push the proposal next year, but the smaller companies aren't sure yet whether they join in. A group of about 60 small chemical companies and co-ops called the Pesticide Producers Association, of which Farmland is a member, is to meet this week to decide whether it can afford a $350,000 lobbying effort over the next two years. Last year the group spent $100,000.

Farmland suffered its worst year in fiscal 1986. Its interest in the generic pesticide is not so much for its own financial benefit, because Farmland officials aren't sure to what extent their firm would produce generics, but for the sake of its members, officials said.

"If we can show 20 to 25 percent drop in the price on these products because of someone else—Farmland or anyone—coming in to the market, that's an overall savings to all of our members and the farmers," said John M. Wise, Farmland's regulatory affairs manager.

In October, when the Senate considered legislation to overhaul pesticide laws, Mrs. Kassebaum offered her plan as an amendment but later withdrew it because it threatened passage of the whole bill. As it turned out, the bill died and probably is going to be considered again next year.

Kassebaum, a Republican, is now in the minority in the Senate, but she still hopes that the plan will come up again early next year.

"I think we're going to get a groundswell going this time that members of Congress are going to have a hard time coming out against this," Wise said.

By Mr. HOLLINGS (for himself, Mr. BREAUX, Mr. INOUYE, Mr. FORD, Mr. RIEGLE, Mr. EXON, Mr. GORE, Mr. ROCKEFELLER, Mr. PRESSLER, Mr. KASTEN, Mr. TRIBLE, Mr. NUNN, Mr. PRYOR, Mr. BUMPERS, Mr. HEFLIN, Mr. BINGAMAN, Mr. DECONCINI, Mr. SASSER, and Mr. NICKLES):

S. 747. A bill to establish a motor carrier administration in the Department of Transportation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

ESTABLISHMENT OF A MOTOR CARRIER ADMINISTRATION IN THE DEPARTMENT OF COMMERCE

● Mr. HOLLINGS. Mr. President, today I am introducing, with my colleague Senator BREAUX, legislation to establish a Motor Carrier Administration within the Department of Transportation [DOT]. This bill is similar to one I introduced, but which was not acted upon, during the 99th Congress. Senator BREAUX sponsored this measure as a Member of the House of Representatives. The bill's purpose is to promote efficiency and enhance the development of a coordinated national transportation system. I am pleased to have as cosponsors of this measure Senators INOUYE, FORD, RIEGLE, EXON, ROCKEFELLER, PRESSLER, KASTEN, TRIBLE, NUNN, PRYOR, BUMPERS, HEFLIN, BINGAMAN, DECONCINI, SASSER, and NICKLES.

As most of us well know, motor carriers serve an essential role in our national transportation network. The trucking industry is the largest and most pervasive of all modes of transportation in this country. It carries the most freight, travels the greatest number of miles, employs the most people, and offers the greatest variety of transportation services.

Unlike other methods of transporting goods—rail, air, and water—trucking is not limited to a few terminals and byways. Its operations are conducted on the streets, roads, and highways of the Nation—in every county, town and city. It has a daily impact on the traveling public, and on the homes, businesses, farms, and factories along those routes. In addition, trucking very significantly affects the governmental entities responsible for maintaining and operating those roads.

The intercity bus industry also serves as an important component of our passenger transportation network. The industry estimates that in 1985 alone, intercity buses carried over 325 million passengers and traveled approximately 995 million miles over our Nation's highways.

Since Congress created it in 1966, the Department of Transportation has been home to a number of administrative agencies which represent specific modes of transportation. The Federal Aviation Administration, the Urban Mass Transportation Administration, and the Federal Railroad Administration, among others, are examples of how the consolidation of functions has improved Government's role in enhancing transportation safety, efficiency, and productivity.

Yet, curiously, there is no single organizational entity in the Federal Government which can represent the motor carrier industry and serve as the principal outlet for information to the public. Questions on motor carrier safety are diverted to the Federal Highway Administration and the National Highway Traffic Safety Administration, while decisions on regulatory and taxation matters seem to bubble up out of nowhere.

The bill we are introducing today would address this obvious deficiency. It represents a very simple legislative step—the creation without DOT of a modal administration that would consolidate bus and trucking functions now spread throughout the Department. This would be known as the Motor Carrier Administration. The bill would also require the Secretary of Transportation and the chairman of the Interstate Commerce Commission [ICC] to report to Congress within 6 months of enactment, outlining which ICC functions should be transferred to the new agency.

The Motor Carrier Administration would serve several important functions. First, it would facilitate truck and bus operations to benefit the public interest now and in years to come. Second, it would fulfill the purposes of the Department of Transportation Act relative to transportation policy, technological development, transportation safety, protecting the environment, improving transportation systems, and protecting consumer interests. Finally, the Motor Carrier Administration would provide comprehensive research, planning and programming that will enable Congress and the Federal Government to make well founded and properly directed legislative and regulatory decisions.

This bill has strong support within the trucking and bus industries. Other groups also realize the potential benefits and have endorsed its passage. Supporters of a Motor Carrier Administration include:

American Bus Association.
American Pulpwood Association.
American Retreaders Association.
American Trucking Associations.
Food Marketing Institute.
Motor Vehicle Manufacturers Association.

National Association of Truck Stop Operators.
National Automobile Dealers Association.
National Council of Farmer Cooperatives.
National Farmers Union.
The National Grange.
National Safety Council.
Service Station and Automotive Repair Association.
Towing and Recovery Association.
Trucking Industry Alliance.
Truck Trailer Manufacturers Association.
United Bus Owners of America.
United Fresh Fruit and Vegetable Association.

Mr. President, the creation of a Motor Carrier Administration will promote efficiency. Such an administration would be relatively small in size, but would benefit virtually all Americans by providing better access, ensuring improved coordination and resulting in an improved national transportation system.

I urge my colleagues to support the passage of our bill, which would accomplish these objectives.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 747

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that—

(1) within the Federal Government there is, for each mode of transportation (other than motor carrier), one organizational entity responsible for coordinating activities to ensure the safe and efficient operation of transportation by such mode;

(2) such coordination for motor carrier transportation has been lacking with regard to advising Congress, conducting research, planning and programming, and developing and integrating policies and programs within our total national transportation network;

(3) the establishment of a Motor Carrier Administration within the Department of Transportation will increase productivity and efficiency, and will provide cost savings resulting from the elimination of duplicative activities within the Federal Government;

(4) motor carrier safety is an area of increasing public concern, and the establishment of a Motor Carrier Administration would reflect the intent of Congress to give the highest priority to safety on the Nation's highways; and

(5) the Motor Carrier Administration will facilitate improved access and interaction among the Federal, State, and local governmental agencies, motor carrier, shippers, and the traveling public, thereby furthering the public interest.

SEC. 2. (a) Section 104 of title 49, United States Code, is amended—

(1) in subsection (c), by (A) inserting "and" immediately after the semicolon at the end of paragraph (1), (B) striking paragraph (2), and (C) redesignating paragraph (3) as paragraph (2); and

(2) by striking subsection (d).

(b)(1) Chapter 1 of subtitle I of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 111. Motor Carrier Administration

"(a) The Motor Carrier Administration is an administration in the Department of Transportation.

"(b)(1) The head of the Administration is an Administrator who is appointed by the President, by and with the advice and consent of the Senate. The Administrator reports directly to the Secretary of Transportation.

"(2) The Administration has a Deputy Administrator who is appointed by the Secretary, with the approval of the President. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

"(c) The Administrator shall carry out—

"(1) duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 31 of this title; and

"(2) other functions, powers, and duties of the Secretary relating to motor carriers prescribed by the Secretary, except for the authority to promulgate motor vehicle safety standards applicable to the manufacture of trucks and buses, which authority shall remain in the National Highway Traffic Safety Administration.

"(d) A duty or power specified in subsection (c)(1) of this section may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers and involving notice and hearing required by law is administratively final.".

(2) The analysis for chapter 1 of subtitle I of title 49, United States Code, is amended by adding at the end thereof the following: "111. Motor Carrier Administration.".

(c)(1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"Administrator, Motor Carrier Administration, Department of Transportation.".

(2) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following:

"Deputy Administrator, Motor Carrier Administration, Department of Transportation.".

SEC. 3. Within six months of the date of enactment of this Act, the Secretary of Transportation, in consultation with the Chairman of the Interstate Commerce Commission, shall—

(1) review all activities of the Interstate Commerce Commission which affect transportation by motor carriers, to determine which activities could be more efficiently performed by the Motor Carrier Administration; and

(2) tramsmit to the Congress the results of this review conducted under paragraph (1) of this section, together with such recommendations for legislation or other action necessary to achieve such efficiencies.●

● Mr. BREAUX. Mr. President, I am pleased to join with the distinguished Senator from South Carolina and chairman of the Senate Commerce Committee, Mr. HOLLINGS, to introduce legislation to establish a Motor Carrier Administration within the U.S. Department of Transportation. During the 99th Congress, I had introduced a Motor Carrier Administration bill in the House. At that time, Senator HOLLINGS had introduced a similar Senate bill. It is my privilege and honor to join with him in the Senate in the 100th Congress to reintroduce Motor Carrier Administration legislation.

As proposed, the bill would authorize consolidation of motor carrier policy, management, and operations into one office. By purpose, the legislation is designed to improve and enhance the policy and regulatory framework of motor carrier programs, as well as to enable more efficient and effective program development and implementation.

Intended beneficiaries of the Motor Carrier Administration are the motor carrier industry, the public, and the Federal Government.

The motor carrier industry is composed of private and for-hire trucks and buses. Daily, the industry serves the public through freight and passenger transportation. Grouping motor carrier programs into a single unit, namely, the Motor Carrier Administration, would allow the industry to serve the public better and the Federal Government to work more effectively with the industry.

Unifying these programs under the Motor Carrier Administration would facilitate administration motor carrier productivity, safety, vehicle size and weights, environmental protection and taxation issues. Just as important, program duplication could be eliminated.

A Motor Carrier Administration would allow for a better coordinated and more cohesive development and implementation of motor carrier policy, management and operations. Identification of and solutions to problems could be improved. Industry and Government could communicate and work together more effectively and efficiently. Motor carrier operations could be made safer and more productive as the result of a consolidation, to the benefit of the public, the industry, and the Federal Government.

The concept of consolidating transportation programs and administering them under a single agency has precedent. Established and operational today are the Federal Aviation Administration, the Maritime Administration, and the Federal Railroad Administration.

I join with Chairman HOLLINGS in welcoming Senators to cosponsor the bill to show support for establishment of a Motor Carrier Administration within the Department of Transportation.●

● Mr. SASSER. Mr. President, I am joining today as an original cosponsor of legislation to establish a Motor Carrier Administration within the Department of Transportation. This is identical to legislation I cosponsored in the 99th Congress.

The trucking industry is the largest means of transportation in the United States by any standard—freight car-

ried, miles traveled, people employed. It directly effects millions of people daily—the traveling public, businesses, factories, and farms. Indirectly, it touches the lives of virtually all Americans daily. It carries our food, our fuel, and our clothing.

The industry is particularly important in rural areas. Thousands of my constituents in Tennessee are totally dependent on the trucking industry to move goods to and from their communities. They live in areas which have few alternative transportation options and trucking is vital to their economic development.

One issue that has been of particular concern in my State is that of truck safety. In 1980, in Tennessee, there were 81 accidents involving combination trucks resulting in 89 fatalities. By 1985, those figures had climbed to 108 accidents and 121 deaths. Clearly, much work remains to be done on safety issues.

Despite its importance, there is no single agency of the Federal Government responsible for coordinating trucking policy. We have the Federal Aviation Administration for airlines, we have the Federal Railroad Administration for railroads. But the responsibility for the most important transportation mode in the country is scattered all over the Federal Government.

The legislation we are introducing today will correct that deficiency. It creates a Motor Carrier Administration in the Department of Transportation. This modest step offers important advantages.

First of all, it will provide a central point in the Federal Government for transportation policy, technological development, transportation safety, protecting the environment, improving transportation systems, and protecting consumer interests. Currently, responsibility for these areas is so scattered throughout the Federal Government that one hand often does not know what the other is doing.

In addition the Motor Carrier Administration would provide comprehensive research, planning, and programming. It will enable Congress and the executive branch to implement the soundest and most effective trucking policies. The result will be better service to carriers, shippers, and the traveling public.

So, I am pleased to join in cosponsoring this bill and I urge its early consideration by the Senate.●

ADDITIONAL COSPONSORS

S. 12

At the request of Mr. CRANSTON, the names of the Senator from South Carolina [Mr. HOLLINGS], the Senator from Indiana [Mr. LUGAR], the Senator from Iowa [Mr. HARKIN], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 12, a bill to amend title 38, United States Code, to remove the expiration date for eligibility for the educational assistance programs for veterans of the All-Volunteer Force; and for other purposes.

S. 24

At the request of Mr. MOYNIHAN, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 24, a bill to amend title II of the Social Security Act to waive, for 5 years, the 24-month waiting period for Medicare eligibility on the basis of disability in the case of individuals with acquired immune deficiency syndrome [AIDS], to require the Secretary of Health and Human Services to make grants to State and local governments for the establishment of programs to test blood to detect the presence of antibodies to the human T-Cell lymphotrophic virus and to make grants to eligible State and local governments to support projects for education and information dissemination concerning acquired immune deficiency syndrome, and for other purposes.

S. 51

At the request of Mr. HATCH, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 51, a bill to prohibit smoking in public conveyances.

S. 63

At the request of Mr. STEVENS, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 63, a bill to establish a National Commission on Acquired Immune Deficiency Syndrome.

S. 109

At the request of Mr. INOUYE, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 109, a bill to permit the naturalization of certain Filipino war veterans.

S. 450

At the request of Mr. ARMSTRONG, the names of the Senator from Colorado [Mr. WIRTH], the Senator from Nevada [Mr. HECHT], the Senator from Nevada [Mr. REID], the Senator from Idaho [Mr. SYMMS], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 450, a bill to recognize the organization known as "the National Mining Hall of Fame and Museum."

S. 542

At the request of Mr. ARMSTRONG, the names of the Senator from Tennessee [Mr. GORE], and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 542, a bill to recognize the organization known as the "Retired Enlisted Association, Inc."

S. 552

At the request of Mr. CRANSTON, the names of the Senator from Colorado [Mr. WIRTH], and the Senator from Iowa [Mr. HARKIN] were added as cosponsors of S. 552, a bill to improve the efficiency of the Federal classification system and to promote equitable pay practices within the Federal Government, and for other purposes.

S. 585

At the request of Mr. DURENBERGER, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 585, a bill to provide relief to State and local governments from Federal regulations.

S. 660

At the request of Mr. DURENBERGER, the name of the Senator from Washington [Mr. EVANS] was added as a cosponsor of S. 660, a bill to create a fiscal safety net program for needy communities.

S. 729

At the request of Mr. WEICKER, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 729, a bill to provide for the development and implementation of programs for children and youth camp safety.

SENATE JOINT RESOLUTION 5

At the request of Mr. D'AMATO, the names of the Senator from Minnesota [Mr. DURENBERGER], the Senator from Nebraska [Mr. EXON], and the Senator from Utah [Mr. HATCH] were added as cosponsors of Senate Joint Resolution 5, a joint resolution designating June 14, 1987, as "Baltic Freedom Day."

SENATE JOINT RESOLUTION 14

At the request of Mr. HELMS, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of Senate Joint Resolution 14, a joint resolution to designate the third week of June of each year as "National Dairy Goat Awareness Week."

SENATE JOINT RESOLUTION 52

At the request of Mr. HATCH, the names of the Senator from Louisiana [Mr. JOHNSTON], the Senator from Alabama [Mr. SHELBY], the Senator from Washington [Mr. EVANS], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Idaho [Mr. SYMMS], and the Senator from Connecticut [Mr. WEICKER] were added as cosponsors of Senate Joint Resolution 52, a joint resolution designating the week of May 10, 1987, through May 16, 1987, as "National Fetal Alcohol Syndrome Awareness Week."

SENATE JOINT RESOLUTION 56

At the request of Mr. INOUYE, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of Senate Joint Resolution 56, a joint resolution designating the third week in May of each year as "National Tourism Week."

SENATE JOINT RESOLUTION 63

At the request of Mr. BRADLEY, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from Connecticut [Mr. DODD], the Senator from New Mexico [Mr. DOMENICI], the Senator from Utah [Mr. GARN], the Senator from Iowa [Mr. GRASSLEY], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Idaho [Mr. MCCLURE], the Senator from Alaska [Mr. MURKOWSKI], the Senator from South Dakota [Mr. PRESSLER], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Idaho [Mr. SYMMS], the Senator from Virginia [Mr. TRIBLE], the Senator from Wyoming [Mr. WALLOP], and the Senator from California [Mr. WILSON] were added as cosponsors of Senate Joint Resolution 63, a joint resolution to designate March 21, 1987 as "Afghanistan Day."

SENATE JOINT RESOLUTION 73

At the request of Mr. D'AMATO, his name was added as a cosponsor of Senate Joint Resolution 73, a joint resolution designating the week of April 26, 1987, through May 2, 1987, as "Youth Commitment to Ending Hunger Week."

SENATE CONCURRENT RESOLUTION 20

At the request of Mr. GORE, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from North Dakota [Mr. BURDICK], the Senator from Maryland [Mr. SARBANES], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Alabama [Mr. SHELBY], the Senator from Pennsylvania [Mr. HEINZ], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of Senate Concurrent Resolution 20, a concurrent resolution to express the sense of Congress that funding for the Vocational Education Program should not be eliminated.

SENATE RESOLUTION 167

At the request of Mr. BIDEN, the names of the Senator from Michigan [Mr. LEVIN], the Senator from Rhode Island [Mr. PELL], the Senator from California [Mr. CRANSTON], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Massachusetts [Mr. KERRY], and the Senator from Illinois [Mr. SIMON] were added as cosponsors of Senate Resolution 167, a resolution concerning constitutional principles pertinent to the making of treaties, and further concerning the interpretation of the treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems.

SENATE CONCURRENT RESOLUTION 31—COMMENDING THE CZECHOSLOVAK HUMAN RIGHTS ORGANIZATION, CHARTER 77, ON ITS 10TH ANNIVERSARY

Mr. PRESSLER submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 31

Whereas on August 1, 1975, the Final Act of the Conference on Security and Cooperation in Europe was signed at Helsinki, Finland, by 33 European states, together with Canada and the United States;

Whereas the signatories of the Helsinki Final Act committed themselves under principle VII to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion";

Whereas principle VII specifically confirms the "right of the individual to know and act upon his rights and duties" in the field of human rights, and principle IX confirms the relevant and positive role organizations and persons can play in contributing toward the achievement of the aims of the Helsinki Final Act;

Whereas the Helsinki Final Act raised the expectations of the peoples of Czechoslovakia for greater observance of human rights by the Government of Czechoslovakia, and engendered the formation of Charter 77 in 1977 as a mechanism whereby private citizens could maintain a dialogue with that Government;

Whereas since 1977, when 257 people signed the Charter 77 manifesto, the number of signatories has risen to over 1,000;

Whereas in April 1978, Charter 77 signatories founded the working group VONS, the Committee for the Defense of the Unjustly Persecuted, which complements the work of Charter 77;

Whereas Charter 77 has informed many in the West of important developments in Czechoslovak society and the world, and it has willingly engaged in dialogue with other East European activists, as well as West European organizations and individuals;

Whereas individuals involved in Charter 77 and VONS activities have spoken out honestly and forthrightly in a society beset by routine human rights violations, and they have done so at the risk—and sometimes the certainly—of imprisonment, exile, harrassment, and other punishment by the Government of Czechoslovakia;

Whereas the Government of Czechoslovakia persecutes not just the people actively involved in Charter 77's activities, but also family members, including children;

Whereas at present, seven signatories of the Charter 77 manifesto are serving prison terms of are in detention: Walter Kania, Frantisek Veis, Jiri Wolf, Lenka Mareckova, Stanislav Pitas, Herman Chromy, and Jan Dus; and

Whereas January 1987 marks the tenth anniversary of the establishment of Charter 77: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) commends the Czechoslovakia human rights organization Charter 77, on the occasion of the 10th anniversary of its establishment of the aims of the Helsinki Final Act;

(2) calls upon the Government of Czechoslovakia to cease its persecution of those involved in Charter 77 and other human rights activities; and

(3) commends the United States representatives to the Vienna Review Meeting of the Conference on Security and Cooperation in Europe for raising with the representatives of the Government of Czechoslovakia the issue of the persecution of those involved in Charter 77 and other human rights activities, and encourages them to continue to raise this issue.

NOTICES OF HEARINGS

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a markup on March 19, 1987, at 2 p.m., in Senate Russell 485, on the following bills:

S. 136. A bill to improve the health status of Native Hawaiians; and

S. 360. A bill to improve the education status on Native Hawaiians, and for other purposes.

Those wishing additional information should contact the committee at 224-2251.

ADDITIONAL STATEMENTS

TRIBUTE TO VAL BJORNSON

● Mr. DURENBERGER. Mr. President, one of the true giants of public service in Minnesota, former State treasurer Val Bjornson, died Tuesday night at his home in South Minneapolis. He was 80 years of age.

I first came to know Val Bjornson as a young worker in the Republican Party in Minnesota. Val upheld the progressive and pragmatic tradition of the Minnesota Republican Party—as State treasurer for a total of 22 years and as our party's candidate for the U.S. Senate against the late Hubert H. Humphrey in 1954.

I also had the privilege of working with Val in 1966 when he and my law partner, Harold LeVander, campaigned together for statewide office. Later as then Governor LeVander's executive secretary, I saw firsthand the diligence with which Val Bjornson carried out his responsibilities as State treasurer.

Val Bjornson was particularly conscious of his accountability to the people who elected him time and again between 1950 and 1975. I recall, a time in 1972, when I was executive secretary to the Minnesota Constitutional Study Commission, an impassioned presentation by Val arguing against making the State treasurer position appointive. Although the commission voted against his recommendation, Val kept a careful eye on the treasurer's method of selection even after he left office. Perhaps partly due to his vigilance, the office is still elected.

Val Bjornson was well known for his booming voice and his great sense of humor. His Icelandic heritage was a frequently cited oddity in a State dominated by Norweigians and Swedes—German-Polish politicians with names like Durenberger are a relatively recent phenomenon. And, Val was always quick to point with pride to his family, particularly his children, as evidence of the substantial contributions of Icelanders to his State.

Mr. President, an important part of Minnesota's history died the other night with one of its outstanding and most devoted public servants, Val Bjornson. Because of his outstanding contributions, I request that the following tribute published in the Minneapolis Star and Tribune be printed in the RECORD:

The article follows:

EX-STATE TREASURER BJORNSON DIES AT 80

(By Robert Wheratt)

Val Bjornson, the deep-voiced orator who served as state treasurer longer than anyone else in Minnesota history—a total of 22 years—died Tuesday night at his south Minneapolis home. He was 80.

A daughter, Maja Bjornson, said her father died of congestive heart failure.

Gov. Rudy Perpich ordered flags lowered to half-staff in the State Capitol complex today and Friday in memory of the man whom at least three generations of politicians and political devotees simply called "Val."

"He was one of Minnesota's most liked and most respected public servants," Perpich said. "He served with honor and distinction in state office, and brought honor and distinction to his political party."

Valdimar Bjornson gave up a newspaper and radio career in 1950 to run for state treasurer as a Republican. He would need no other job; it was his for as long as he wanted it.

In 1954 he ran unsuccessfully for the U.S. Senate against the incumbent freshman, Hubert Humphrey. Bjornson sat out of politics for two years and then ran again for his treasurer's seat, which he regained in 1957 and held until 1975, when he retired because of ill health.

He brought to the job a voice strong enough to snub microphones, a deep sense of Minnesota history, an appreciation of his Icelandic heritage and a regard for his office.

He was a conversationalist, a raconteur and an orator who frequently was heard at Lincoln Day festivities favored by Republicans. He liked good stories and good drink, and enjoyed combining the two.

He was multilingual and often conversed in fluent Norwegian with Gov. Karl Rolvaag, a close friend from college days.

Rolvaag the Norwegian and Bjornson the Icelander would sometimes speak in Norwegian at Executive Council meetings, much to the consternation of Secretary of State Joseph Donovan and Auditor Stafford King. They would scheme in Norwegian in front of the two, come back to English and complete their plan.

Rolvaag laughed at that recollection yesterday, saying he could not confirm or deny it. But he remembered his old friend.

"Val was a very decent, very humane person," Rolvaag said.

"Val Bjornson was more of a Democrat than a Repubican (by today's standards). He was a very liberal Republican. He certainly would be very uncomfortable in the Republican Party today," the former DFL governor said.

Former Republican Gov. Harold LeVander called Bjornson "a great fellow, a good politician and a very able speaker."

With his Icelandic background, "He got both the Swedes and the Norwegians to vote for him," LeVander said.

Bjornson was a power within the Republican Party. In 1956, when he returned to office after losing the Senate race to Humphrey, he was the only Republican on the state ticket to win.

The Democratic-Farmer-Labor Party conceded the office to Bjornson, fielding token opponents against him. Only Stafford King, who was state auditor for 38 years, and Mike Holm, who was secretary of state for 31 years, held constitutional office in the executive branch longer than Bjornson.

Russell Fridley, the retired director of the Minnesota Historical Society, said Bjornson was a man of "scholarly interest and ability who brought a strong sense of history to his office."

Bjornson was born in Lyon County in 1906, the son of Icelandic immigrants. His father owned the Minnesota Mascot, a weekly newspaper, and Val served as editor before and after he attended the University of Minnesota. In 1930 he graduated Phi Beta Kappa and five years later became a Twin Cities radio commentator on news, farm and political topics.

He worked for the old Minneapolis Journal and later the Minneapolis Tribune. In 1947 he was named associated editor of the St. Paul Pioneer Press and Dispatch.

He spent four years in the Navy during World War II in Iceland. While stationed there he married a native Icelander, Gudrun Jonsdottir. He was discharged as a lieutenant commander.

Besides his wife, Bjornson is survived by daughters Helga Visscher of Northport, Ala., Kristin Ode of St. Paul and Maja Bjornson of Minneapolis; sons Jon and Valdimar, both of Minneapolis; brothers Bjorn and Jon, both of Minneapolis; sisters Helga Brogger of Minneapolis and Stefania Denbow of Athens, Ohio, and four grandchildren.●

THE HELSINKI COMMISSION

● Mr. D'AMATO. Mr. President, I rise today to begin an effort to sum up my experiences as Chairman of the Commission on Security and Cooperation in Europe since April 1985 and to set forth my views on the future of the Helsinki process and U.S. policy toward the process. By operation of Public Law 99-7, I relinquished the chairmanship of the Commission with the beginning of the 100th Congress, so I am taking this opportunity to highlight for my colleagues and the American people certain important issues which I strongly believe warrant urgent and thoughtful attention.

The Commission, which is popularly known as the Helsinki Commission, was established to oversee the implementation of the Helsinki Final Act. There are 21 Commissioners, of whom 9 are Senators, 9 are Representatives, and 3 are from the executive branch. I want to begin my remarks by thanking individually everyone who served as a Commissioner during my chairmanship.

The distinguished Members of this body who served on the Commission during my chairmanship were Senators JOHN HEINZ, JIM MCCLURE, MALCOLM WALLOP, GORDON HUMPHREY, CLAIBORNE PELL, PATRICK LEAHY, RUSSELL LONG, and DENNIS DECONCINI. The distinguished Members of the House of Representatives who served as Commissioners are STENY HOYER, DANTE FASCELL, SIDNEY YATES, TIMOTHY WIRTH, ED MARKEY, DON RITTER, CHRIS SMITH, JACK KEMP, and JOHN EDWARD PORTER. Our distinguished colleague Senator FRANK LAUTENBERG was appointed to the Commission after this past November's election, replacing RUSSELL LONG. The distinguished executive branch Commissioners were Assistant Secretary of Defense Richard N. Perle and Assistant Secretary of State Richard Schifter. The Commerce Department's seat on the Commission has been and remains vacant.

Each of these Commissioners has contributed to the Commission's efforts in his own way. Without the help and support of each of them, the Commission could not have accomplished its assigned oversight task and could not have been effective in its efforts to advance the cause of human rights.

While the individual contributions of Commissioners have been too numerous to mention in detail, I do want to make special mention of the dedication, knowledge, leadership ability, and commitment of my distinguished and able cochairman, Representative STENY HOYER of Maryland, who was appointed Chairman for the 100th Congress on February 11. Our distinguished colleague, the senior Senator from Arizona, Senator DENNIS DECONCINI, was appointed Cochairman for the 100th Congress on February 26. Knowing both of these gentlemen well and having the highest respect for their talents, I am confident that the Commission's leadership for this Congress is in good hands and that they will aggressively and successfully pursue the Commission's mandate in the Helsinki process.

The Commission is a bipartisan, bicameral, legislative branch agency which includes executive branch members and deals with foreign policy in a particularly complex multilateral area. With STENY's very capable assistance, we were able to function effectively, advancing the cause of human rights and working toward the kind of world in which we all want to live—a secure world at peace and marked by growing trust, confidence, and cooperation among nations.

I will not try to tell you that there were not disagreements among the

Commissioners about various aspects of United States/Helsinki policy. There were, as anyone who attended any of our hearings could honestly report. Regardless of these disagreements, we were able to achieve a sound bipartisan understanding of the shape and content of Helsinki process policy and to employ our efforts to improve and enhance that policy and its implementation. I want to commend all of my fellow Commissioners for their contributions to that understanding and our joint efforts. On the issues before the Commission, we have shown how a bipartisan approach to foreign policy can work for our long-term national interests.

The Commission's annual reports for 1985 and 1986 are published by the Government Printing Office as individual documents and are included as well in the records of the Commission's budget presentatations before the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and related agencies. These reports present the detailed record of the Commission's activities during my chairmanship. Instead of repeating here the information provided in our annual reports, I refer those interested in this information to those reports, which are available from the Commission or the Government Printing Office.

Today, I will present a summary of the Commission's activities. In future remarks, I will discuss the way that United States Helsinki policy is made, Soviet policy, NATO policy, the role of the neutral and nonaligned states in the Helsinki process, and interactions between Helsinki policy and other important areas of United States bilateral and multilateral foreign policy. I will conclude by looking at the future of the Helsinki process from my perspective at the end of 2 years as Commission chairman.

During 1985, the Commission held hearings on the following topics: The Ottawa Human Rights Experts' meeting and the future of the CSCE process; human rights abuses in Cyprus; use of forced labor in the Soviet Union; restrictions on artistic freedom in the Soviet Union; Budapest cultural forum; and Soviet violations of the Helsinki accords in Afghanistan. Also in 1985, the Commission participated in the following formal international events in the Helsinki process: The Ottawa Human Rights Experts' meeting; the Stockholm Conference on Confidence and Security building measures and disarmament in Europe—better known as the C.D.E. talks—and the Budapest cultural forum.

During 1986, the Commission held hearings on the following topics: 1952 McCarran-Walter Act; a two-part hearing on the future of the CSCE process; a two-part hearing on the Bern human contacts experts' meeting; the Stockholm Conference and the future of the CSCE process; Soviet and East European emigration policies; Natan Shcharansky and the 10th anniversary of the Moscow Helsinki monitoring group; the Vienna C.S.C.E. followup meeting; and the conclusion of the Stockholm C.D.E. talks. Also in 1986, the Commission participated in the following formal international events in the Helsinki process: the Bern human contacts experts' meeting; the C.D.E. talks; and the opening round of the Vienna C.S.C.E. followup meeting.

Commissioners were able to visit and participate in each Helsinki process meeting except the Budapest cultural forum. Because of the legislative schedule, it was impossible to organize a visit to the forum. Commission staff was heavily and continuously involved in both preparations for and conduct of United States participation in each of these Helsinki events.

Finally, in 1986, the Senate adopted Senate Resolution 353, appropriating $200,000 to support an investigation by the Commission into the Miroslav Medvid incident. The Commission has hired two professional investigators, a staff attorney, and an administrative assistant to form the investigative unit performing this inquiry. They have been hard at work since last summer and have made substantial progress. I expect them to finish their work in time to meet the May 14, 1987 deadline for submission of a report to Congress on their findings. In the interim, the investigation is being conducted in confidence by the Commission, so that a professional, comprehensive, and objective examination of the facts and circumstances can be concluded and so that we can meet the terms of the mandate set forth in Senate Resolution 353.

This is a bare outline of the Commission's activities. Against this outline, let me describe the Commission's operations for you. In the words of our establishing statute, 22 U.S.C. 3002, "The Commission is authorized and directed to monitor the acts of the signatories which reflect compliance with or violation of the articles of the final act of the conference on security and cooperation in Europe, the Helsinki accords, with particular regard to the provisions relating to human rights and cooperation in humanitarian fields." To perform this function, the Commission had a fiscal year 1986 appropriation of $526,000. These funds were used to pay the salaries and expenses of the Commission's staff and to pay for Commission operations.

In order to accomplish its monitoring function, the Commission's staff participates in interagency working groups which make United States Helsinki process policy. They work very closely with the Departments of State, Defense, and Commerce, with A.C.D.A., the National Security Council staff, and other U.S. agencies. They draft position papers, provide background material, and write speeches and other documents for use by United States delegations at Helsinki process events.

When a Helsinki process meeting is taking place, Commission staff is fully integrated into the official United States delegation, serving as officers in various positions of responsibility. For the Vienna C.S.C.E. followup meeting which began on November 4, 1986, the Commission's Deputy Staff Director, Sam Wise, was appointed to the rank Ambassador by the President and serves as Deputy Chairman of the U.S. delegation. In recognition of the Commission's vital role in the Helsinki process, both my distinguished cochairman, STENY HOYER, and I were appointed vice chairman of the United States delegation to the followup meeting and had the opportunity to make personal contributions to our work at Vienna during the first round of talks.

In addition to the staff's work with official United States agencies, the foundation of our efforts rests upon our contacts with persons and nongovernmental agencies interested in the Helsinki accords and their success. We do a great deal of case work. Our case work consists of assembling files on every person who comes to our attention with a problem which falls under the provisions of the final act. Relatives, friends, organizations, and other sources provide us with information concerning prisoners of conscience, persons who are denied permission to emigrate, persons who are persecuted because of their religious beliefs, political activities, or cultural activities, and divided families or separated spouses, among other cases. We also assemble thorough documentation on government policies and practices which violate their Helsinki commitments.

The Commission's staff is selected for its familiarity with the languages and cultures of the nations which have the worst records of compliance with the human rights and humanitarian affairs provisions of the Helsinki final act. Needless to say, we are talking about the Warsaw Pact states, led by the Soviet Union. The Commission's files provide the verbal ammunition for our efforts to achieve better compliance with the final act by Eastern bloc states. The names, dates, places, copies of laws and regulations, and stories of great personal suffering and hardship contained in our files provide the facts we use to prepare speeches, talking points, letters, telegrams, press releases, and to develop position papers and proposals.

At this point, having recognized the contributions of the Commissioners and explained the work of the staff, I want to call to the attention of my colleagues and the American people the Commission's staff and commend them individually by name for their exemplary efforts, high professionalism, dedication, and knowledge. The members of the staff are Michael R. Hathaway, Mary Sue Hafner, Samuel G. Wise, Meredith Brown, Deborah Burns, Barbara Jeanne Cart, Cathy Cosman, Lynne Davidson, Orest Dechakiwsky, Mildred Donahue, Barbara Edwards, John Finerty, Robert Hand, Frank Heath, Judy Ingram, Jesse Jacobs, Paul Lamberth, Ron McNamara, and Lenny Steinhorn. Thomas Warner is on detail to the Commission from the Government Printing Office.

I especially want to recognize the important role Mike Hathaway played as staff director of the Commission during the 99th Congress. Responding to the need to substantially increase the Commission's level of activity and expand its role in all aspects of the Helsinki process, he exercised effective and energetic leadership of the staff to develop and implement the program I felt was necessary. He built an active agenda of hearings and events based upon an incisive analysis of the Helsinki process. He forged a cooperative relationship with Mary Sue Hafner, the cochairman's chief staffer and the Commission's general counsel, which complemented and supported the close relationship between myself and my cochairman. We were able to sustain the Commission as a stable and expert organization under steady and confident administration, greatly enhancing our effectiveness.

The Commission's new leadership has selected Sam Wise to serve as staff director, replacing Mike. Sam's unquestioned expertise, long experience, and substantial abilities will ensure that the Commission's work continues to meet the highest standards. I commend him on his appointment and look forward to working with him in my continued role as a member of the Commission.

Returning to the subject of the Commission's work, let me note that some signatory states outside the Warsaw Pact have problems regarding compliance with some of their Helsinki obligations. Unlike Eastern bloc states, we usually have more effective means of influencing their behavior in these areas than through open criticism in the public fora of the Helsinki process. The Helsinki process is, however, the best way to reach and influence the human rights and humanitarian affairs compliance policies of the totalitarian Eastern bloc states. In this group, we have had more effect on non-Soviet Warsaw Pact states than we have had on the Soviets themselves. This is a topic I will discuss in more detail as I progress through this review.

During my tenure as chairman, the central fact of the Helsinki process was the Warsaw Pact states' violation of their Helsinki human rights commitments. Despite recent promising developments in the Soviet Union, this remains the case today and will remain the case until the Soviets and their allies decide to comply in fact with the promises they made when they agreed to the Helsinki Final Act and the Madrid concluding document.

Confronted with deliberate violations of Soviet and other Warsaw Pact states' Helsinki promises as a direct result of state policies, the Commission had to address the question of the credibility of the Helsinki process in the eyes of the American people. Prominent critics of the process charged that the Soviets got the best of us at Helsinki in 1975—that the Soviets were seeking the equivalent of a formal peace treaty ending World War II, therefore legitimizing the Red army's redrawing of Eastern European borders by force, and that the Soviets and their allies made human rights promises to the West that they had no intention of keeping in order to achieve this goal. Moreover, the critics allege, by continuing to talk to the Soviets and their allies in the fora of the Helsinki process, we implicitly grant them international political legitimacy, tolerating with a diplomatic nod and wink their gross failure to meet their Helsinki obligations, and tacitly abandoning the exercise of real leverage to get them to stop violating their citizens' human rights.

These criticisms gained public prominence because they struck a responsive chord in the American people. As a member of the Commission since 1981, I have long held the view that what is necessary from the U.S. perspective is the coordinated application of a combination of effective traditional diplomacy and aggressive and skillful public diplomacy. The goal of this enterprise is either to obtain Soviet and Warsaw Pact compliance with their promises or to cause them to pay a cost in their international relations directly proportional to the seriousness of their violations of their promises. A well-coordinated combination of these two approaches was lacking and, to an extent, still is lacking in the executive branch's Helsinki process efforts. I will explore this question in greater detail in subsequent remarks.

The Commission's response to this situation was to capitalize on our unique composition and take full advantage of the public visibility and attractiveness of our issues. If the executive branch of the United States Government was reluctant to raise publicly and discuss in a frank, factual, and specific manner Soviet and other Warsaw Pact states' human rights violations, the Commission could, to some extent, compensate for that failing. If the United States did not want to confront the policy issues involved in the exercise of leverage, through our hearings we could at least bring the issues before the public and give interested experts and leaders from outside the Government the opportunity to comment and recommend courses of action.

Accordingly, during the past 2 years, my distinguished cochairman and I held hearings on the entire range of issues in the Helsinki process. We attempted to hold hearings both before and after every international Helsinki process meeting. We also held hearings intended to address the basic state of health of the Helsinki process and to deal with the public criticisms of the process.

Our objectives were to raise the public profile of the Helsinki process as a whole, to allow the processes' public constituencies in the United States the opportunity to present their views on the process and to remain fully informed about United States Helsinki policy, to place on the record the United States' position, to provide Commissioners the public opportunity to compliment, criticize, or make recommendations to United States officials and to provide an opportunity to review performance and assess the results. In private, we also engaged administration officials in a continuing dialog about United States Helsinki process policy.

We sought to highlight for the American people the lack of credibility of the Soviet Union's Helsinki process promises, hoping that the Soviets would respond with steps to improve their compliance in order to avoid collateral damage to their public credibility across the board. In other words, the Commission's focus and emphasis was on the public diplomacy element of United States Helsinki process policy. We sought to foster public support for the Helsinki process by directly addressing the criticisms of the process I have previously noted.

While those criticisms struck a responsive chord in the American people, I believe an aggressive, active, and well-coordinated United States Helsinki policy is the best answer to the critics. The process has profound inherent value to the United States and the West as a whole, but to realize its possibilities requires a deep understanding of it and a willingness to press ahead with determination over the long haul. After more than a decade's experience with the process, it is clear that any expectation of rapid, meaningful progress is bound to be disappointed.

In my view, traditional diplomacy could accomplish little within the Helsinki process. The only role for tradi-

tional diplomacy when faced with obdurate Soviet violations is the exercise of leverage. But the imposition of the grain embargo by President Carter showed the outer limits of the effectiveness of our leverage over Soviet behavior. Accordingly, what was needed was a skillful combination of the exercise of leverage, recognizing its limited potential for modifying Soviet behavior, with a forceful, consistent, high-profile public diplomacy campaign designed to employ the Soviet's own misdeeds to impeach their credibility.

We achieved a recognition of this need in the executive branch. In fact, United States public diplomacy in the Helsinki process has noticeably improved. What has not improved is the coordination of traditional diplomacy and public diplomacy. I completed my term as chairman with the clear impression that much more could be done than was being done.

Now, conditions are changing. In the Soviet Union, we have "glasnost" and "perestroika" ("openness" and "restructuring," respectively). Some political prisoners are being released and there has been a small increase in emigration. Cultural freedom is improving somewhat. But hundreds of political prisoners remain incarcerated, families remain divided, religious repression has not eased, and many other serious problems remain. Still, Gorbachev's "reforms" have had an effect on American public opinion and on American public diplomacy.

This new and complex situation poses serious challenges to the Commission and to United States Helsinki policy. I will address these matters in greater detail in subsequent remarks.

In conclusion, Mr. President, I have set forth in these short remarks an overview of the Commission's responsibilities, composition, function, activities, and method of operating under my chairmanship. It was an enjoyable, active, and challenging 2 years. I would not have missed the opportunity to lead the Commission. I take away from my term as chairman the memory of the people I was personally able to help—people like Mikhail Stukalin and Rimma Braave—and the privilege to have met and worked with some of the moral heroes of our time—Natan Sharansky, his wife Avital, and Yuri Orlov, among others—and the deep feeling that I was able to accomplish something to ease the suffering of those who are still denied freedom behind the Iron Curtain.

I treasure my associations with the concerned Americans who form the groups of private citizens pressing for improved Soviet and other Warsaw Pact compliance with their Helsinki obligations. They give freely of their time, effort, and money, from the heart, for people who they do not know. They march, they speak, they write, they organize, trying to bring the benefits of respect for human rights and fundamental freedoms to the oppressed millions. They are living proof that the spirit of our democracy is alive as a beacon to our own people and to the people of the world. Their courage and their sacrifices are an example to us all.●

YOUTH'S COMMITMENT TO ENDING HUNGER WEEK

● Mr. D'AMATO. Mr. President, I rise today to cosponsor legislation designating the week of April 26, 1987, through May 2, 1987, as "Youth's Commitment to Ending Hunger Week." I commend my distinguished colleague, Senator DODD, for recognizing the vital role of our Nation's youth in mobilizing this country's efforts to eliminate world hunger.

Hunger is the cause of more than 35,000 deaths worldwide every day. Of the 24 victims claimed by hunger every minute, 18 are children. More and more of our Nation's young are becoming aware of these tragic statistics, and translating that awareness into action is an effort to bring the issue of hunger into focus for the entire Nation.

A number of youth organizations have organized in response to the world hunger crisis. One such organization, called Youth Ending Hunger, has committed itself to the effort to end hunger by the end of this century. As a demonstration of that commitment, they are gathering signatures of over 100,000 students who share their goal.

I am pleased to support Senator DODD's resolution designating a week in their honor. I encourage my colleagues to lend their support to this legislation.●

THE SIOUX NATION BLACK HILLS ACT—S. 705

● Mr. BRADLEY. Mr. President, on Tuesday, March 11, I, along with Senators INOUYE and PELL, introduced S. 705. By a mistake, the Senator from Washington [Mr. EVANS] was listed as a cosponsor. As the statement he filed with our bill clearly indicates, he is not a cosponsor of the bill. He is, however, supportive of our efforts to resolve the issue and has promised his cooperation.

Senator EVANS is always thoughtful and I am certain his insight will be invaluable. His interest is most welcome. Although he is not a cosponsor at this time, I hope to see him become one in the future.

Mr. EVANS. Mr. President, I thank my colleague and friend from New Jersey for that clarification. As I stated on the day the Sioux Nation Black Hills Act was introduced, I have grave concerns about several of the provisions of this bill as currently written. I can assure the Senator from New Jersey, however, that I am sympathetic to his cause, and that I will work with him, the other cosponsors of the bill, and the Senators from South Dakota to fashion a fair and equitable solution to this issue. I believe it is possible to reestablish the Great Sioux Reservation, consistent with the long-settled expectations and rights of the non-Indian citizens of South Dakota. I can assure Senator BRADLEY and the people of the Sioux Nation that I will work diligently with them to bring this dream to fruition.●

PROPOSED REINTERPRETATION OF ABM TREATY

● Mr. SIMON. Mr. President, yesterday the Foreign Relations and Judiciary Committees held joint hearings on the Reagan administration's proposed reinterpretation of the ABM Treaty. I sit on both committees, so I took a special interest in this first of two hearings. It was very instructive.

The issue in question is really very simple. It is whether the Senate in 1972 agreed to a specific understanding of what the treaty allows and what it forbids, and whether the President now will faithfully execute the supreme law of the land. It is only secondarily, although no unimportantly, a matter of what kind of development and testing can occur under the ABM Treaty.

Senator JOSEPH BIDEN has introduced a bill, Senate Resolution 167, which I am proud to cosponsor. It is a responsible resolution that simply says a treaty's interpretation stems from the materials placed before the Senate by the Executive, and that in the case of the ABM Treaty any deviation from the traditional understanding prohibiting development, testing, or deployment of sea-based, air-based, space-based, or mobile land-based ABM devices is inconsistent with the treaty's provisions. It further states that any amendment offered to the ABM Treaty must occur with the agreement of the parties and with the advice and consent of the Senate.

I would like to cite just a few passages from the testimony given on these matters. Prof. Louis Henkin, university professor and former Harlan Fiske Stone professor of constitutional law at Columbia University, told the committees:

> The President can only make a treaty that means what the Senate understood the treaty to mean when the Senate gave its consent. The Senate's understanding of the treaty to which it consents is binding on the President.

A future President cannot then attach a different meaning to the treaty as its has been traditionally understood.

Senator SAM NUNN, the chairman of the Armed Services Committee, has

examined the treaty's negotiating record and ratification proceedings in detail. He has "examined the reinterpretation's analysis of the Senate ratification proceedings and found its conclusions with respect to this record not to be credible." Senator NUNN testified that the Nixon administration presented the traditional interpretation and "the Senate clearly understood this to be the case at the time it gave its advice and consent to the ratification of the treaty."

Senator J. William Fulbright, chairman of the Foreign Relations Committee and floor manager of the treaty during the Senate's consideration of the treaty, said that "neither the President, the Secretary of State, nor any of the President's arms control advisers suggested that the treaty would permit of development, testing and deployment of antiballistic missiles in space of under any technology not then existing." The meaning of a treaty, he says, "is informed by the interpretations spelled out in its legislative history as well as by all relevant executive communications" and not "what a later generation of policymakers would like it to mean."

And Prof. Laurence Tribe, Tyler professor of constitutional law at Harvard University, testified that to "ascertain the meaning of a treaty one must understand what the Senate that gave its consent to the making of that treaty had before it. To permit that meaning to be changed by reference to something that the consenting Senate did not have before it, and particularly by reference to something that was deliberately withheld from the Senate during the debates on ratification, would profoundly pervert the entire process."

Invoking the negotiating record to the virtual exclusion of the Senate's ratification proceedings, as the administration holds, would apportion more responsibility to Soviet negotiators and what they may or may not have said in secret than to the 100 Senators who constitutionally share in the treaty-making power. In this regard, Abram and Antonia Chayes recently asked in a June 1986 Harvard Law Review article on the ABM Treaty reinterpretation whether it was "consistent with the constitutional structure for the Executive, more than a decade after the treaty was ratified, to advance an interpretation, based on secret materials that were not before the Senate when it gave its advice and consent." I think the answer must be it is not consistent.

Mr. President, recently I came across an article, again written by Abram and Antonia Chayes, that has direct bearing on these hearings and on the matter of reinterpreting the ABM Treaty. The article appeared in the January/February 1987 issue of Arms Control Today, and is sobering reading. The message is that at the 1986 Reykjavik summit and in Geneva today we are still miles apart on negotiating limits on strategic offensive and defensive arms. A major stumbling block is the pace and scope of the SDI Program and, hand in hand with this, the respect for the traditional and logical understanding of the ABM Treaty.

The Chayes' point out that the United States is pushing for a 10-year period of unlimited testing and development in space, leading to a scrapping of the treaty after this period of time. The Soviet delegation is saying that some testing and development may be acceptable, but within the basic framework of the ABM Treaty and after which time the treaty will still be in force. Clearly, this is not the stuff of which fruitful negotiations are made.

I hope we will be more forthcoming in Geneva in the strategic area, and I hope that the administration will not let its apparent commitment to revising the ABM Treaty get in the way of a good agreement. I commend to my colleagues the article by Abram and Antonia Chayes, "The Future of the ABM Treaty," and I ask that it be printed in the RECORD in full. I also commend to my colleagues' attention the Chayes' article in the June 1986 Harvard Law Review, "Testing and Development of 'Exotic' Systems Under the ABM Treaty: The Great Reinterpretation Caper," and I ask that this too be printed in the RECORD in full.

The material follows:

THE FUTURE OF THE ABM TREATY

(By Abram Chayes and Antonia Chayes)

(Abram Chayes, the Felix Frankfurter Professor of Law at Harvard Law School, and Antonia Chayes, Chairman of the Board of ENDISPUTE, Inc., a consulting firm on alternative forms of conflict resolution, and former under secretary of the Air Force, jointly delivered the keynote address at the annual meeting of the Arms Control Association on December 5, 1986. Some of Antonia Chayes' remarks refer to her participation on December 3 and 4 in the Dartmouth Conference Arms Control Task Force, an ongoing U.S.-Soviet exchange. *Arms Control Today* is pleased to publish the text of their remarks at the annual meeting.)

ANTONIA CHAYES: Right after the Reykjavik summit, we wrote that the United States and the Soviet Union were within reach of an across-the-board agreement for drastic reductions in strategic offensive and intermediate nuclear forces, but that the talks obviously foundered on the future of the Strategic Defense Initiative. No formula was found that could bridge what appeared to be a narrow gap between the Soviet and American positions on the pace and nature of research and development of space-based defensive systems.

The positions are technically close, but in concept and political thrust they are miles apart. We have been meeting with a group of Soviet academicians, and we've gotten very deeply into the subject. It certainly made some of us on the American side feel there was more tragedy than triumph because of what could be. On the other hand, we haven't given up completely.

The United States proposal on July 25 was that for five years the U.S. would adhere to the ABM Treaty, performing, and I quote in part ". . . development and testing, which is permitted by the ABM Treaty." And that's a very important comma and "which". After five years, either side could move out of the treaty, but would be obligated to make a proposal first that would eliminate all ballistic missiles, and second, would share the benefits of SDI technology. That proposal would be negotiated over a two-year period, at the end of which either party was free to deploy.

At Reykjavik, the President extended the period to meet the Soviets, who had come down from 15 to 10 years in their proposal. He extended the period up to 10 years, but conditioned it, first, on the elimination of all ballistic missiles in the second five years of the strategic offensive forces agreement.

The Soviet proposal at Reykjavik was written in the form of a draft directive to the foreign ministers and was handed to the President at the beginning of the summit. We spent a few days looking at that text. What it says is very important and explains a great deal about the breakup of the meeting. The Soviet statement says that for the purpose of strengthening the ABM Treaty, the United States and the Soviet Union should make a commitment for 10 years not to exercise their right to withdraw and that both sides should strictly adhere to all the obligations of the treaty in their entirety. According to the Soviet proposal, testing of all spaced-based elements—and note the word "elements"—of ballistic missile defense systems in outer space, except research and testing in laboratories, should be prohibited. This, the proposal said, will not ban testing of fixed ground-based systems and their components, which is allowed by the ABM Treaty.

We spent a lot of time, as have many government officials, trying to grasp the import of this proposal. It clearly meant something more than a 10-year commitment not to withdraw. There were some buzz words in the proposal, and the buzz words really set off some of the people at the summit, and especially the President. One buzz word was "strengthening" the ABM Treaty, which was understood to mean amending the ABM Treaty. That is the way it was read by the President.

Then came the word "element." The Soviets proposed that research and testing of space-based "elements" be restricted to the laboratory, which was read by the Americans as a more restrictive interpretation of the ABM Treaty. The U.S. delegates thus thought the Soviets wanted to amend the treaty.

Some of the Soviet academicians and officials we talked to have made clear that they did expect at Reykjavik to be asked what all of this meant. What the Soviets want is an assurance that the United States won't be aggressively developing defensive systems that would be capable of deployment and that would permit U.S. forces to strike first and cripple the Soviet retaliatory capability—at the same time that the Soviet Union and the United States are reducing their nuclear forces by 50 percent.

ABRAM CHAYES: You ought to see the difference here between the U.S. and the Soviet positions. The U.S. position is 10 years and out. It was originally seven years

and out. At the end of seven years the treaty would be over; everybody would be free to do what they wanted. We would abide by the treaty for seven years, or abide by the new arrangement for seven years, but at the end of that time both sides were free to deploy. Whereas the Soviet position was to agree not to withdraw for 10 years, but at the end of 10 years we would still be under the ABM Treaty. That's a very major difference in the conception of what the 10-year period means.

ANTONIA CHAYES: It is impossible to believe that five years, or even 10 years, of technology testing, which is in fact allowed by the traditional interpretation of the treaty, would lead to a point where a decision could be made on whether the technology was promising and we were ready to deploy strategic defense systems. We couldn't possibly deploy without a long period of testing.

I think the Soviets are willing to live for a 10-year period under the treaty because they realize that there would be another 10-year period of very intensive testing before there would be anything ready to deploy.

What is close to tragedy is that, it certainly appears to me after conversations of the last few days, the Soviets could have relaxed their proposal to strengthen the treaty, and the United States could have proposed a 10-year period of robust, well-paced research to learn about the technology fully within the parameters of the ABM Treaty. On that basis there would be a bridge between these two positions, which now seem so unbridgeable.

But this compromise doesn't really meet the President's vision, nor of the SDI enthusiasts. For them, the value of testing is not scientific, but is to obtain the same or higher level of funding for SDI. Also, there are people within the government who don't want any arms control and seize on this as a very good way to avoid an agreement. It's perfectly clear there cannot be reductions in offensive forces without some commitment on the part of the United States not to build defense.

ABRAM CHAYES: Everybody talks about SDI One—this total, complete defense against all missiles. Then there's SDI Two, which is a point defense of missile silo sites. Then there's SDI Three, which is a complete defense against arms control. And it's really SDI Three that is the administration's position.

It looks like the two sides are actually close together. You can bridge this with some lawyer's language. What you have here is a couple of soggy words like "components" and "elements" that one side translates one way and the other side translates another. You could get some intermediate ground that would accommodate the interests of both sides.

ANTONIA CHAYES: And that's still true, technically.

ABRAM CHAYES: Technically. But if you examine the underlying directions on both sides, you hear the United States saying: we want a 10-year period of unlimited testing and development in space, at the end of which the treaty, I'm afraid, no longer applies. And you hear the Soviet side saying: we are prepared to accept a somewhat expanded notion of testing and development of elements in space, but under the treaty regime for a period of 10 years in which you can't withdraw from the regime and thereafter the regime continues. So those are very, very different outlooks towards the future. When you try to bridge those outlooks you find that it's very difficult.

This ABM story is characteristic of the arms control story generally in the last several years. The Soviets are taking what I would say is a "pro-arms control position" and they're showing us a degree of moderation, imagination, and flexibility in responding to the situation as it develops. Meanwhile, the United States is digging in and refusing to alter its fundamental resistance to an agreement.

In the intermediate nuclear forces (INF) area, it was clear long before Reykjavik that the Soviets were willing to go to zero-zero levels of missiles in Europe. In fact, I think it was clear at the time of the "walk in the woods" that you could have gotten an agreement on INF at very low numerical levels. Since then the Soviets have said they are prepared to limit their Asian SS-20s to 100.

ANTONIA CHAYES: And that's been a really huge move foreward.

ABRAM CHAYES: At the Stockholm negotiations [on confidence- and security-building measures in Europe] the Soviets moved to meet U.S. objections on a number of counts: on the size of the military exercises to be subject to the notification requirement; on inspection and verification, and so on. In the test ban area the Soviets have repeatedly come forward with new and attractive proposals and a moratorium in which they have persisted over a long period of time despite almost provocative refusal to accept it on our part.

The Soviets have also made new verification invitations, some of them practical, some of them only rhetorical, but at least verbally the Soviets have said that they are prepared to accept on-site inspection in ways that were not previously available.

ANTONIA CHAYES: In general, consider the distance the Soviets have moved on verification from where they were before. The whole notion of on-site inspection, which was considered very intrusive before by the Soviets, has been a logjam. That is now at least theoretically broken in the context of the proposals that have been made.

ABRAM CHAYES: Across the whole spectrum the Soviets have been much more receptive to ideas about intrusive verification techniques. On the test ban they suggested that they were prepared to think about a phased movement to a comprehensive test ban over a period of years. Now, all of these facts I think are well known to the people in this room. But they are not widely known and their true significance is not appreciated by the American public.

The administration has a standard response to every new Soviet proposal. It is to discuss it as a propaganda ploy by a statement out of The White House the day after the proposal is announced. The effect of that is simply to cut off discussion, analysis, and careful consideration of the pros and cons of that proposal. We in the arms control community have contributed to what has become a major mis-education of the American public on the arms control situation. We've all grown up in an era when it was necessary to maintain our credibility, our political credibility, by being "even-handed" in the arms control business. That has meant in the last few years, that if we criticize the United States and its positions, then we also have to criticize the Soviet Union, or at least not say anything nice about the Soviet Union. The effect is to reinforce the stereotypes that dominate this whole business, the stereotypes that arms control negotiations are a zero-sum game in which the object is to come out better than the other side. True, we're pursuing a common interest, but at the end the treaty ought to leave us better than the other guy.

Another stereotype is that if it's a zero-sum game, the Soviets are trying to win it and they're trying to best us by the use of guile and chicanery. I believe, of course, that Soviet arms control offers, and positions, and proposals, like American offers, and positions, and proposals, must be subject to careful and political analysis. There's no reason to let anybody off the hook on that. They certainly shouldn't be taken at face value. But, as Tony said about the ABM proposal, often they're not really intended to do any more than open the conversation or set a framework for more detailed and careful negotiation.

But I think we cannot let reasonable caution obscure some fundamental and basic truths. At least since the Gobrachev-era began, the Soviets have shown a willingness to negotiate in good faith on arms control matters across the board. They have demonstrated this by coming forward with a wide range of constructive and serious proposals in many fields. They have maintained flexibility and they have kept the decibel level and the rhetorical level relatively low, all things considered.

My personal view is that we don't need any fancy theories about bargaining chips or muscle or negotiating constraints to explain this phenomenon. I think it can be explained by a rational and human concern on the part of the Soviet Union for the future of their own country. And indeed for the future of the planet.

By contrast, here in the United States the dominant factions and people in the administration, though there are some exceptions, don't want an agreement and have resisted it at every turn. The administration has moved, when it has moved, only so far as it has been forced to move by public and congressional opinion. Even when the administration has moved, it has not come forth with serious substantive proposals. It has tended to rely on public relations, like the Reykjavik spin, and anti-Soviet rhetoric.

The chief responsibility for lack of progress in arms control lies with the United States, and not with the Soviet Union. It is important that the American people understand that. I think that is a task that those of us who believe in arms control have to take very seriously for the future.

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[COMMENTARIES*]

TESTING AND DEVELOPMENT OF "EXOTIC" SYSTEMS UNDER THE ABM TREATY: THE GREAT REINTERPRETATION CAPER

(By Abram Chayes** and Antonia Handler Chayes***)

In October 1985, the Reagan Administration proposed a sweeping new interpretation of the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems (the ABM Treaty).[1] Under this new dispensation, the ABM Treaty would permit the development and testing of anti-ballistic missile weapons based in space and using lasers, particle beams, and other novel technologies. The new interpretation is directly contrary to the position taken by the United States since 1972, when the Treaty was signed.

The issue is not simply a lawyer's quarrel or an academic exercise in textual analysis. The ABM Treaty is the only bilateral arms control agreement in full force and effect

between the two superpowers. It is central to the present strategic arms control regime. Its demise would end the era of arms limitation by agreement, for if this treaty collapes, it is hard to see why either country would want to enter another one.

The new interpretation must be seen in the context of President Reagan's Strategic Defense Initiative (SDI). On March 23, 1983, the President launched this new program, challenging American science and technology to devise a defensive shield that would protect the nation against strategic nuclear missiles—that would render such weapons "impotent and obsolete." [2] Until October 1985, the SDI had been defended by government lawyers on the ground that it was confined to "research," which is not prohibited by the Treaty.[3] The proposed reinterpretation would insulate SDI from the ban of the Treaty beyond the research phase, through the stages of development and testing. The Treaty would by this interpretation prohibit only the actual deployment of a space-based system. Such a reading is a gross distortion of both the language and purpose of the Treaty.

I. THE TREATY TEXT

It should be said at the outset the realization of the goal set by President Reagan is prohibited by the Treaty. In article I(2), "Each Party undertakes not to deploy ABM systems for a defense of the territory of its country and not to provide a base for such a defense. . . ." Indeed, the basic purpose of the Treaty is to prevent the parties from ever acquiring the capability to establish the nationwide defense against strategic ballistic missiles that the President seeks. The question is how closely a party can approach that goal without fatally rupturing the Treaty.

A. Articles II and V

Article V(I) of the Treaty bans the testing, development, and deployment of all ABM systems other than fixed land-based systems. It states: "Each Party undertakes not to develop, test, or deploy ABM systems or components which are sea-based, air-based, space-based, or mobile land-based." The comprehensiveness of this prohibition is confirmed by the equally sweeping definition of ABM systems in article II of the Treaty: "For the purpose of this Treaty an ABM system is a system to counter strategic ballistic missiles or their elements in flight trajectory, *currently* consisting of: (a) ABM interceptor missiles, . . . (b) ABM launchers, . . . ; and (c) ABM radars, . . ."[4]

Despite the clarity of these provisions, the new interpretation asserts that the United States *can* develop and test space-based anti-ballistic missile systems without violating the Treaty provided they are based on "other physical principles" [5] (such as lasers or particle beams) than those employed by the systems in use when the Treaty was concluded in 1972.

By what legerdemain can the straightforward prohibition of article V(i) be converted into a limited ban on development and testing of 1970's technology only? The State Department Legal Adviser sought to accomplish this result by turning the comprehensive definition of ABM systems contained in Article II(i) into a limiting defintion, confined to systems comprising the three conventional components: missiles, launchers, and radars. According to the Legal Adviser's testimony: "[Article II] can more reasonably be read to mean that the systems contemplated by the treaty are those that serve the functions described *and* that currently consist of the listed components." [6]

Article II is on its face a *functional* definition. It defines the prohibited systems on the basis of performance, not technology. The word "and" does not appear in the Treaty text. Even if it did, it is hard to see how it would convert the language of subparagraphs (a), (b), and (c) into words of limitation. The natural reading of the phrase "currently consisting of" makes the system description that follows illustrative, not limiting.

The legislative history supports this common-sense interpretation. When the ABM Treaty was transmitted by the President to the Senate for advice and consent, it was accompanied by a detailed "Report by Secretary of State Rogers to President Nixon on the Strategic Arms Limitation Agreements." [7] Statements made by the President and his senior officials in presenting the Treaty to the Senate have particular weight on questions of the interpretation of the treaty. The Senate's understanding of the treaty on which it acts depends on the interpretations provided by the President, who negotiated the treaty. Such interpretations are decisive with respect to the obligations assumed by the United States.[8]

The report of Secretary Rogers expressly and unambiguously affirms the functional character of the Article II definition: "Article II(i) defines an ABM system in terms of its *function* as 'a system to counter strategic ballistic missiles or their elements in flight trajectory,' noting that such systems 'currently' consist of ABM interceptor missiles, ABM launchers, and ABM radars." [9] This passage appears at the beginning of the section of the report entitled "*Future ABM Systems,*" and obviously is intended to explain the applicability of the Treaty to such future systems. The quoted passage directly contradicts the contention of the Legal Adviser that the definition is limited to systems using conventional technology. Secretary Rogers' report makes clear that the enumeration of the components is an illustrative reference to systems currently in use, not a limitation of the coverage of the Treaty.

The Legal Adviser is able to adduce no support for his position that article II is a limiting definition, either in the legislative history or in contemporaneous or later accounts by officials associated with the negotiating or ratification process. In fact, as Dr. Raymond Garthoff, the Executive Secretary and a Senior Adviser in the United States delegation that negotiated the Treaty, tells us:

"The word "currently" was deliberately inserted into a previously adopted text of Article II at the time agreement was reached on the future systems ban in order to have the very effect of closing a loophole to the ban on futures in both Articles III and V (and several others)."[10]

If the draftsmen had wanted a limiting definition, they had it in the "previously adopted text" to which Dr Garthoff refers. We know from his account that this penultimate text defined an ABM system as "a system to counter strategic ballistic missiles . . . in flight trajectory, consisting of . . . missiles, . . . launchers, . . . and radars," There could be no conceivable reason for deliberately inserting the word "currently" into that sentence if the intention had been to maintain a limiting definition. As the discussion below of the negotiating history shows, the purpose of this drafting change was to ensure the comprehensive coverage of future systems by means of the definition of the term "ABM systems," instead of dealing with the matter by special language in the substantive provisions of the Treaty, as had been originally sought by the United States.

Once the functional character of the article II definition is established, the reading of article V to ban development and testing of space-based systems using future technology is inescapable. This reading is also fully supported by the legislative history. The Rogers report itself does not state expressly that article V applies to "exotic" as well as conventional systems. But other key administration witnesses testifed categorically that it does so apply. Secretary of Defense Laird, for example, in a written response to a question from Senator Goldwater of the Senate Armed Services Committee concerning "development of a boost-phase intercept capability or lasers," replied:

"There is . . . a prohibition on the development, testing, or deployment of ABM systems which are space-based, as well as sea-based, air-based, or mobile land-based. The U.S. side understands this prohibition not to apply to basic and advanced research and exploratory development of technology which could be associated with such systems, or their components.

"There are no restrictions on the development of lasers for fixed, land-based ABM systems. The sides have agreed, however, that deployment of such systems . . . shall be subject to discussion in accordance with article XIII . . . and agreement in accordance with article XIV . . ."[11]

This is an explicit confirmation by the Secretary of Defense that article V does prohibit development and testing of space-based systems embodying new physical principles, such as lasers. It is not cited by the Legal Adviser in his testimony and memorandum in support of the reinterpretation. Dr. John Foster, Director of Defense Research and Engineering, the official in the defense Department directly responsible for all research on exotic ABM systems, also confirmed this interpretation of article V.[12]

The Senate fully understood the import of these statements by high-ranking administration witnesses. Senator Thurmond supported the Treaty, but mentioned among his reservations: "It also prevents us from developing new kinds of systems to protect our population. The most promising type appears to be the laser type, based, on entirely new principles. Yet we forgo forever the ability to protect our people."[13] Senator Buckley, one of the two who voted against the Treaty, was even more specific: "[A]rticle V of the ABM treaty . . . would have the effect . . . of prohibiting the development and testing of a laser type system based in space . . . The technological possibility has been formally excluded by this agreement."[14]

There is not a single positive statement in the legislative history interpreting article V as limited to current technology. Secretary Rogers does not mention exotic systems in describing that article, but he does expressly adopt a functional reading of the article II definition of ABM systems. That reading necessarily entails that the ban on development and testing in article V apply comprehensively to all space-based ABM systems, whether composed of 1972-type components or using other physical principles. Witnesses sometimes referred to the ban on deployment of exotic ABM systems without mentioning the limitations on development and testing. But whenever the Senate expressly addressed the issue of future systems, ad-

ministration witnesses stated unequivocally that such systems were covered by article V.

B. Article III and Agreed Statement D

Although articles II and V are the most directly relevant to the present controversy, two other provisions, article III and Agreed Statement D, are also closely involved. Article III contains the only explicit exception to the Treaty's sweeping prohibitions. It permits deployment of fixed land-based systems at two sites—one around a party's national capital and one at a missile field—and it circumscribes in detail the type and quantity of allowable components.[15] Agreed Statement D is one of a set of Agreed Statements initialed by the heads of the two delegations and appended to the Treaty. The statements were used as a drafting device to clarify specific points or remove possible ambiguities in more general language in the body of the Treaty. They were transmitted to the Senate as part of the Treaty.[16] Agreed Statement D provides:

In order to insure the fulfillment of the obligation not to deploy ABM systems and their components except as provided in Article III of the Treaty, the Parties agree that in the event ABM systems based on other physical principles and including components capable of substituting for ABM interceptor missiles, ABM launchers, or ABM radars are created in the future, specific limitations on such systems and their components would be subject to discussion in accordance with Article XIII [establishing the Standing Consultative Commission] and agreement in accordance with Article XIV [the amending article] of the Treaty." [17]

The legal Adviser argues that because agreed Statement D is the only part of the Treaty that specifically mentions future technologies, it must be taken as setting forth the rules that govern their treatment. Thus, as to systems "based on other physical principles," only deployment is prohibited. This argument assumes the validity of the interpretation of article II as a limiting definition, embracing only conventional ABM systems and excluding all exotic systems from the prohibitions on testing and development in article V. The Legal adviser denies that the prohibition in Agreed Statement D is addressed to fixed land-based systems only: "Nothing in that statement suggests that it applies only to future systems that are fixed land based. . . ." [18]

But the Agreed Statement *does* indicate that it is confined to fixed land-based systems. The inducing clause recites that its purpose is to "insure the fullfillment of the obligation not to deploy ABM systems and their components except as provided in Article III of the Treaty." And as we have seen, the deployments permitted under article III are fixed land-based systems using 1970s-type technology.[19]

The Legal Adviser would have us believe that the Agreed Statement, tacked on at the end of the Treaty, imposed a new and reaching substantive prohibition on the deployment of exotic systems not found elsewhere in the instrument. The statement's role is much more modest, however, and much more appropriate to the character of such statements. As suggested in the inducing clause, it clarifies and strenthens the obligations of article III. In that article, the limits on deployments at the permitted sites are expressed in terms of missiles, launchers, and radars, the components of systems then in use. Because article III begins with an undertaking "not to deploy ABM systems or their components except" as provided in the article, the implication is that only systems using such components, that is, conventional technology, could be deployed. Agreed Statement D makes this implicit limitation explicit by stating expressly that deployment of systems based on exotic technology is prohibited by the obligations undertaken in Article III.

There is a further special reason for a statement emphasizing the prohibition on the deployment of fixed land-based exotics. As noted above, article III establishes strict limitations on the firepower and targeting capabilities of systems deployed at the permitted ABM sites. These limitations are designed to ensure that deployments at those sites could not function as systems for the defense of national territory or as a base for such systems, in violation of article I. The constraints were expressed in terms of the then-current technology—primarily as quantitative ceilings on the number of missiles, launchers, and radars.[20] These quantitative restrictions would have no meaning in relation to systems "based on other physical principles." If such systems were "created in the future," therefore, the parties would have to discuss how or even whether comparable restrictions on firepower and capability of the new technology could be devised.

Finally, the Legal Adviser's reading of Agreed Statement D makes an absurdity out of the text of the Treaty proper. In his analysis, the body of Treaty would not prohibit deployment of exotic systems unless they were fixed land-based. But for Agreement Statement D, he says, the Treaty would prohibit deployment on such systems only where conventional deployment was permitted, and allow deployment in all environments where conventional systems were prohibited. Is it conceivable that a treaty text, hammered out over two years of arduous negotiations and review, would mandate such an absurdly self-contradictory result, to be rescued, and then only partially, by the device of an Agreed Statement, appended at the last moment?

C. The Purpose of the Treaty

The interpretation of solemn obligations affecting the security of the United States and the world demands more than playing word games with the text to see what meanings it can be made to bear. The fundamental reason why the reinterpretation of the treaty is unacceptable is that it reflects no intelligible policy or purpose.

The essential assurance each side sought in the ABM Treaty was that the other was not working to achieve an effective territorial defense against ballistic missiles. For this purpose, a simple prohibition on deployments was not enough. If only deployment were prohibited, one side might bring a system through the process of research, development, and testing to the very brink of development—and then escape the treaty constraints by withdrawal (permitted on six months notice under article $XV(_2)$) or simply by repudiation.

The United States was particularly concerned to guard against this "breakout" possibility. It sought positive limitations to increase the lead-time between the moment when a party might decide to try for an ABM system and the time when it could achieve one. Expanding this lead-time itself reduced any incentive for noncompliance, because it meant that the United States would have time to respond to a breakout attempt before the Soviets could capitalize on it. Many of the detailed provisions of the Treaty reflect this concern.[21]

There is simply no basis for distinguishing between conventional and exotic technologies in terms of the danger of breakout. It would have made no sense at all to spend four years in painful negotiation to ensure against breakout from the Treaty with conventional systems, while at the same time permitting free testing and development of "future" systems, as to which the uncertainties were very much greater, right up to the point of deployment.[22]

Consistent with these interests and concerns, many U.S. officials, as noted below, initially wanted a complete ban on futuristic systems.[23] The bureaucratic muscle of the Army, which had a research and development program for fixed ground-based lasers under way, was strong enough to prevent this comprehensive solution.[24] The final U.S. position reflected an internal compromise: development and testing in the fixed land-based mode but not otherwise, and no deployment at all. According to U.S. participants in the negotiations,[25] that was the position that ultimately prevailed. The limited compromise made sense given the configuration of domestic bureaucratic and political forces. To have accepted a treaty that severely limited conventional technologies but let exotics run free, however, would have negated the very purpose for which the negotiation was begun in the first place.

In summary, the basic aim of the Treaty is to bar defense of the national territories of the parties against strategic ballistic missiles. It thus embodies the strategic theory of mutual deterrence based on assured retaliatory capacity of each side. In addition, it would reduce the impetus for an upward spiral in offensive arms, which was to be controlled by the companion Interim Agreement on the Limitation of Strategic Offensive Arms.[26]

Accordingly, the definition of ABM systems in article II is cast in terms of system function rather than system technology, and covers future as well as "current" systems. It follows that the article V prohibition against testing, development, and deployment of all but fixed land-based systems applies to systems based on exotic as well as 1972-type technologies. The only exception to these prohibitions is the testing and development at agreed test ranges and deployment of fixed land-based systems at two sites (now one), subject to strict quantitative and qualitative limitations, as provided in articles III and IV. The limits in article III refer to missiles, launchers, and radars, thus implicitly confining deployment to systems using conventional technology. Agreed Statement D clarifies article III by making explicit this prohibition against replacing any or all of the permitted deployments by exotic fixed land-based systems, except with the concurrence of the other party.

II. THE NEGOTIATING RECORD

The Legal Adviser asserts that the reinterpretation is supported by the classified negotiating record. "The parties," he says, "did not agree to ban development and testing of such systems or components, whether on land or in space."[27] He contends that although U.S. negotiators tried to obtain a ban on development and testing of future systems, "the record of the negotiations fails to demonstrate that they actually succeeded in achieving their objective . . . [T]hey failed to obtain the ban they sought . . . ."[28] In a recent address to the American Society of International Law, he stated that the Soviets refused to accept language proffered by the American delegation (presumably as a part of what became article V)

prohibiting development and testing of "future devices."[29]

Because the record is secret, these statements cannot be directly contradicted. But contemporaneous accounts, the recollections of participants in the negotiations, and on-the-record statements of officials with access to the classified materials provide glimpses of the negotiating history. According to the recollections of Ambassador Gerard C. Smith, the head of the delegation, and other delegation members no longer in government, the Soviets understood and accepted article V as a ban on development and testing of future exotic systems and components.[30]

No doubt there were disagreements between the two sides over language and draftsmanship. Such semantic battles are common in long and hard-fought negotiations. In the end, as Dr. Garthoff stated before the present controversy arose,[31] they were resolved by the insertion of the word "currently" into the definition of ABM systems in article II to ensure that systems using new technologies and composed of different components would be covered by the ban on testing and development in article V.

John Newhouse, in his authoritative book Cold Dawn, gives an account of the evolution of the U.S. negotiating position. He tells us that at first U.S. officials favored a complete ban on exotic systems. On July 2, 1971, it was proposed "to ban exotics by specifying that everything not allowed in a SALT agreement was forbidden."[32] The proposal was the subject of debate within the U.S. government. The controversy was resolved by National Security Decision Memorandum 127 that "banned everything other than research and development on fixed land-based exotics."[33] When the position was presented in Geneva, there was at first some hesitation by the Soviet Union. But, Newhouse relates, "toward the end of January . . . the Soviets accepted the U.S. position on exotic systems."[34]

If, as the Legal Adviser asserts, "the Soviets refused to go along, and no such agreement was reached," [35] established State Department procedures would have required the delegation to send a reporting telegram explicitly stating that they had failed to carry out their instructions on that issue. Indeed, the delegation could not have agreed to a text that rejected the U.S. position on such an important point without express permission from Washington. Such a telegram would be a part of the negotiating record. The Legal Adviser's theory of an undocumented "failure to agree" is simply implausible to anyone familiar with State Department procedures.

Moreover, the practice in the SALT I negotiations when the Soviets refused to accept a major U.S. position was not simply to walk away in silence. A special device, the unilateral statement, was used to deal with such situations. These statements acknowledge that the parties have failed to reach agreement on a point of particular interest to the United States and assert in substance that the United States will regard conduct inconsistent with the U.S. position as inconsistent with the agreement.[36]

The unilateral statement technique was used in the Interim Agreement with respect to land-mobile missiles.[37] In that case, the Soviets refused an explicit prohibition on mobility that had been a major U.S. negotiating objective. The unilateral statement put the U.S. position on the public record so that the Soviets would have no doubt about it. If that format was appropriate with respect to the disagreement over land-mobile ICBM launchers, why not as to testing and development of exotic ABM systems?

Finally, the Legal Adviser's reliance on the still-classified negotiating record raises an issue of principle that is not affected by the actual content of that record.[38] Members of the Senate Armed Services Committee have requested access to the negotiating record, so far unsuccessfully.[39] The Senate, under the Constitution, is a full partner in the treaty-making process. Is it consistent with the constitutional structure for the Executive, more than a decade after the Treaty was ratified, to advance an interpretation, based on secret materials that were not before the Senate when it gave its advice and consent and are not now available to it? More broadly, is such a procedure consistent with the requirements of accountability in a democratic policy?

If the Legal Adviser continues to rely for his conclusion on an admittedly arguable reading of the negotiating record, it seems to us that he is under an obligation to make the relevant portions public. If that is impossible because of the requirements of confidentiality in international negotiations, then interpretation of the Treaty must be based solely on the text and the public record.

III. SUBSEQUENT INTERPRETATION

As a matter of United States law and under international canons of construction, consistent interpretation of the meaning of an enactment by the administrative bodies charged with its implementation is entitled to very great weight.[40] The consistent interpretation of article V by the U.S. agencies supports the traditional interpretation.

Each year since 1978, the Arms Control and Disarmament Agency has been required by law to prepare an Arms Control Impact Statement for presentation to Congress.[41] Through fiscal year 1985, each of these statements, without exception, including those prepared by the Reagan Administration, explicitly endorses the traditional interpretation.[42] The latest such statement for fiscal 1985 says: "The ABM Treaty prohibition on development, testing and deployment of spacebased ABM systems, or components for such systems, applies to directed energy technology (or any other technology) used for this purpose." [43]

Moreover, the Strategic Defense Initiative Organization (SDIO), the entity in the Department of Defense with responsibility for the conduct of the Star Wars program, has heretofore operated on the assumption that the traditional interpretation of the Treaty applies to the program. In its 1985 report to Congress on the compliance status of the program, it acknowledges that:

"The ABM Treaty prohibits the development, testing, and deployment of ABM systems and components that are space-based, air-based, sea-based, or mobile land-based. However, that agreement does permit research short of field testing of a prototype ABM system or component. This is the type of research that will be conducted under the SDI program." [44]

The report then justifies each of the fifteen tests or experiments proposed through fiscal year 1988 as falling into one of three categories, none of which, it contends, are prohibited by the Treaty: (1) "research," (2) development of "subcomponents," or (3) anti-satellite weapons testing.[45] Although these justifications can be challenged on their own terms, there would have been no need whatever for this elaborate legal analysis in the SDIO report if the Legal Adviser's reinterpretation were an accurate statement of the law.

CONCLUSION

A dozen years after the United States undertook in the ABM Treaty "not to deploy ABM systems for a defense of the territory of its country," the current U.S. Administration has decided that it wants to do just that if it can. From this perspective, it is not hard to deduce the origin of the reinterpretation. Although the SDI test program through 1988 might be plausibly defended under the traditional interpretation of the Treaty, subsequent stages cannot. Assistant Secretary of Defense Richard Perle testified before the Subcommittee on Strategic and Theater Nuclear Forces of the Senate Armed Services Committee that we cannot "make an intelligent decision [on whether to develop an SDI system] on the basis of the kind of testing permitted under the restricted [interpretation of the ABM Treaty]." [46] The Administration seeks to escape this difficulty by the simple expedient of reinterpreting the Treaty to read out the constraints, always assumed to be part of the Treaty, on development and testing of space-based exotic systems.

Such a procedure has a number of disturbing implications. Treaties are the supreme law of the land. They are not made by the President alone, but by the President with the advice and consent of the Senate. Although the Executive Branch has always contended that the President can unilaterally terminate a treaty, even the State Department has never argued that he can modify or alter a treaty obligation without the consent of the Senate.[47] Moreover, treaties are not only the law of this land. They also represent a solemn engagement between nations, binding at international law. The terms of that engagement cannot be altered by one of the parties without the consent of the other.

The interpretation of treaties, like the interpretation of statutes and contracts, is the business of lawyers. In our system, lawyers represent clients, and the Canons of Ethics impose an obligation of zealous representation of the client's interest, to the subordination of almost all other consideration.[48] The extent of that obligation has been questioned even in the context of the representation of private clients by private lawyers.[49] But nobody has ever supposed that it applied in anything like its full force to government lawyers. Attorney General William D. Mitchell is reputed to have said, "The government wins when justice is done."

Government lawyers whose field is international law—State Department lawyers—labor under an even heavier constraint. Many of the questions they are asked to consider are nonjustifiable. Their zeal on behalf of their client cannot be reviewed and, if necessary, righted by a neutral tribunal. They have, in a certain sense, the final responsibility for the integrity of the international legal system in which they work.

That responsibility has a special force when the questions at issue implicate arms control treaties. Some significant part of the safety and security of the globe depends on a regime of good faith compliance and action under such treaties, on both sides. It is a fragile skein, easily torn and not quickly mended. To maintain and foster that regime is a prime responsibility of international lawyers, outside of government or in. It is a responsibility equal in dignity to the one we owe our clients. It invokes the highest duty of the lawyer—fidelity to the law itself.

The administration's proposed reinterpretation of the ABM Treaty does not meet these standards.

FOOTNOTES

*The authors of these Commentaries have not seen drafts of each other's pieces. The Commentary format is not meant to be a debate, but rather is meant to present different perspectives on current issues of public importance.

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[1] Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, 23 U.S.T. 3435, T.I.A.S. No. 7503 [hereinafter cited as ABM Treaty]. On October 16, 1985, Robert McFarlane, Assistant to the President for National Security Affairs, said during a television interview: "[The terms of the ABM Treaty] make clear that on research involving new physical concepts, that that activity, as well as testing, as well as development, indeed, are approved and authorized by the treaty. Only deployment is foreclosed. . . ." 85 DEP'T. OF STATE BULL. No. 2105, at 32-33 (Dec. 1985). On October 8, 1985, this position was affirmed at a White House background briefing. Wash.; Post, Oct. 17, 1985, at A4. But on October 14, 1985, Secretary of State Shultz told a gathering of NATO officials that President Reagan had decided as a matter of policy to abide by the traditional interpretation of the treaty, although the new interpretation was "fully justified." *Id.*

[2] Address of President Reagan to the Nation on Defense and National Security, PUB. PAPERS 437, 443 (Mar. 23, 1983).

[3] DEP'T OF DEFENSE, REPORT TO CONGRESS ON THE STRATEGIC DEFENSE INITIATIVE 1985, app. B.

[4] ABM Treaty, *supra* note 1, art. II, 23 U.S.T. at 3439, T.I.A.S. No. 7503, at 5 (emphasis added).

[5] ABM Treaty, *supra* note 1, Agreed Statement D, 23 U.S.T. at 3456, T.I.A.S. No. 7503, at 22.

[6] *ABM Treaty Interpretation Dispute: Hearing Before the Subcomm. on Arms Control, Int'l Security and Science of the House Comm. on Foreign Aff.*, 99th Cong., 1st Sess. 4, 13 (1985) (statements of Abraham D. Sofaer, Legal Adviser, Department of State) [hereinafter cited as *Hearings on Interpretation*]. Following his testimony, the Legal Adviser presented to the committee a memorandum he had prepared for Ambassador Nitze entitled "Analysis of United States and Soviet Postnegotiation Public Statements Interpreting the ABM Treaty's Application to Future Systems." *Id.* app. 15, at 200 [hereinafter cited as Sofaer Memorandum].

[7] 67 DEP'T OF STATE BULL. 3 (1972) [hereinafter cited as *Report by Secretary of State Rogers*].

[8] *See* RESTATEMENT (REVISED) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 326(1) & comments a & b (Tent. Draft No. 6) (1985).

[9] *Report by Secretary of State Rogers*, *supra* note 7, at 6 (emphasis added).

[10] INT'L SECURITY, Summer 1977, at 107, 108 (replying to a letter to the editor which commented on an article written by Dr. Garthoff entitled *Negotiating with the Russians: Some Lessons from SALT*, INT'L SECURITY, Spring 1977, at 3).

[11] *Military Implications of the Treaty on Limitations of Anti-Ballistic Missile Systems and the Interim Agreement on Limitation of Strategic Offensive Arms: Hearings before the Senate Comm. on Armed Services*, 92nd Cong., 2nd Sess. 40-41 (1972) [hereinafter cited as *Hearings on Military Implications*]. At the time the Army had a fixed land-based laser research and development program to which it and its supporters in the Senate attached great importance. *See Id.* at 30-31. Thus, the colloquy quoted in the text is designed to establish that despite the sweeping prohibitions on testing and deployment of space-based exotics, the Treaty protects the Army program. The reference in the testimony to "basic and advanced research and exploratory development" is to standard Pentagon budget categories and excludes field testing and development.

[12] The following dialogue took place between Dr. Foster and Senator Jackson before the Armed Services Committee.

"Senator JACKSON. . . . does the SALT agreement prohibit land-based laser development?

"Dr. FOSTER. No sir, it does not. [Deleted.] . . . .

"Senator JACKSON. . . . Article 5 says each party undertakes not to develop and test or deploy ABM systems or components which are sea based, air based(,) space based or mobile land based.

"Dr. FOSTER. Yes sir; I understand. We do not have a program to develop a laser ABM system.

"Senator JACKSON. If it is sea based, air based, space based, or mobile land based. If it is a fixed land-based ABM system, it is permitted; am I not correct.

"Dr. FOSTER. That is right." *Hearings on Military Implications*, *supra* note 11, at 274-75.

[13] CONG. REC. 26,700 (1972).

[14] *Id.* at 26,703.

[15] The number of permissible sites was later reduced to one by a protocol adopted in 1974. Protocol on the Limitation of Anti-Ballistic Missile Systems, July 3, 1974, art. I, 27 U.S.T. 1645, 1648, T.I.A.S. No. 8276. Article III of the Treaty provides detailed limitations on the area of a permitted ABM system site (a radius of 150 kilometers), the number of missiles and launchers (100 each), and the number of radars that may be deployed at each permitted site. ABM Treaty, *supra* note I, art. III, 23 U.S.T. at 3440, T.I.A.S. No. 7503, at 6. In addition, under article IV, testing of fixed land-based ABMs is severely restricted. *See id.*, art. IV, 23 U.S.T. at 3441, T.I.A.S. No. 7503, at 7.

[16] *See Report by Secretary of State Rogers*, *supra* note 7, at 4 (explaining transmittal of Agreed Statements with Treaty text).

[17] ABM Treaty, *supra* note 1, Agreed Statement D, 23 U.S.T. at 3456, T.I.A.S. No. 7503, at 22.

[18] *Hearings on Interpretation*, *supra* note 6, at 6. Note that Agreed Statement D itself, contrary to the Legal Advisers' position, uses the term of art "ABM systems" when referring to systems using exotic technology. ABM Treaty, *supra* note 1, Agreed Statement D, 23 U.S.T. at 3456, T.I.A.S. No. 7503, at 22.

[19] *See infra* p. 1961 & note 15.

[20] *See supra* note 15. There are qualitative limitations as well. *See* ABM Treaty, *supra* note 1, art. V(2), 23 U.S.T. at 3441, T.I.A.S. No. 7503, at 7 (prohibiting development, testing, and deployment of multiple warhead ABM missiles or rapid-reload launchers).

[21] *See, e.g.*, ABM Treaty, *supra* note 1, arts. III, IV, & V (limiting development and testing); art. III (restricting deployment in permitted areas); art. V(2) (prohibiting rapid-reload launchers and multiple warhead missiles); art. VI(a) (attempting to limit the possibility of "up-grading" anti-aircraft systems and prohibiting "testing in an ABM mode"); art. VI(b) (limiting radar deployment).

[22] Moreover, although the discussion of the reinterpretation has focused to date on its application to space-based systems, it would necessarily apply as well to mobile land-based ABMs, which are also covered in article V. In 1972, U.S. worries about mobile land-based systems were particularly acute, as they are today. A provision permitting development and testing of such systems if they employed exotic but not conventional technologies would have raised serious verification problems.

[23] *See infra* pp. 1966-67 & notes 32-33.

[24] *See supra* note 11.

[25] *See infra* p. 1966 & note 30.

[26] *See, e.g., Hearings on Military Implications*, *supra* note 11, at 286 ("The treaty, by permitting only a small deployment of ABMs, tends to break the offense/defense action and reaction spiral in strategic arms competition.") (statement by Ambassador Gerard C. Smith); *The Moscow Summit: New Opportunities in U.S.-Soviet Relations*, Address by President Nixon to the Congress, 66 DEP'T OF STATE BULL. 855, 857 (1972) ("[T]he [ABM] agreements forestall a major spiraling of the arms race. . . .").

[27] *Hearings on Interpretation*, *supra* note 6, at 7.

[28] *Id.* at 8.

[29] Speech by Abraham D. Sofaer, Legal Adviser, Dep't of State, American Society of International Law Annual Meeting, in Washington, D.C. (Apr. II, 1986) (tape on file at the Harvard Law School Library).

[30] *See Reagan Team Justifies Star Wars Plan By Claiming Loophole in ABM Treaty*, Wall St. J., Oct. 22, 1985, at 64, col. 1. For example, John Rhinelander, the Legal Adviser to the delegation, writing shortly after the adoption of the Treaty, lays out in detail the traditional interpretation of articles III and V and Agreed Statement D:

"The future systems ban applies to devices which would be capable of substituting for one or more of the three basic ABM components, such as a "killer" laser or a particle accelerator. Article III of the treaty does not preclude either development or testing of fixed land-based devices which could substitute for ABM components, but does prohibit their deployment. Article V, on the other hand, prohibits development and testing, as well as deployment, of air-based, sea-based, space-based, or mobile land-based ABM systems or components, which includes "future systems" for those kinds of environments. The overall effect of the treaty, therefore, is to prohibit any deployment of future systems and to limit their development and testing to those in a fixed land-based mode."

SALT: The Moscow Agreements and Beyond 128 (M. Willrich & J. Rhinelander eds. 1974), *reprinted in Hearings on Interpretation*, *supra* note 6, app. 23, at 247, 250. On November 21, 1985, Mr. Rhinelander confirmed this account in testimony before the Subcommittee on Strategic and Theater Nuclear Weapons of the Senate Armed Services Committee.

[31] *See supra* note 10 and accompanying text.

[32] J. Newhouse, Cold Dawn: The Story of SALT 230 (1973).

[33] *Id.* at 231. For a discussion of the importance the Army attached to its fixed land-based laser program, see note 11 above.

[34] J. Newhouse, *supra* note 32, at 237.

[35] *Hearings on Interpretation*, *supra* note 6, at 7.

[36] United States Arms Control and Disarmament Agency, Arms Control and Disarmament Agreements 146-47, 156-57 (1980). This technique was used with respect to the definition of "tested in an ABM mode" within the meaning of article VI, increases in the defenses of Soviet early warning radars, the definition of "heavy" ICBM's, and deployment of land-mobile ICBM launchers. The latter two unilateral statements are appended to the Interim Agreement on Limitation of Strategic Offensive Arms, concluded simultaneously with the ABM Treaty. The unilateral statements were presented to the Senate along with the Treaty.

[37] The unilateral statement on land-mobile ICBM launchers in the companion Interim Agreement on strategic offensive weapons is as follows: "[I]n the interest of concluding the Interim Agreement the U.S. Delegation now withdraws its proposal that Article I or an agreed statement explicitly prohibit the deployment of mobile land-based ICBM launchers. I have been instructed to inform you that, . . . the U.S. would consider the deployment of operational land-mobile ICBM launchers during the period of the Interim Agreement as inconsistent with the objectives of that Agreement." *Id.* at 156.

[38] *See* Case Concerning the Jurisdiction of the European Commission of the Danube, 1927 P.C.I.J., ser. B, No. 14, at 32 (Dec. 8, 1927) (refusal by the Permanent Court of International Justice to consider "confidential" negotiating record).

[39] National Campaign to Save the ABM Treaty, Fact Sheet No. 5: Legal Issues Relating to Reinterpreting the Anti Ballistic Missile Treaty 4.

[40] *See* Restatement (Second) of Foreign Relations Law of the United States § 152 (1965); *see also, e.g.*, Factor v. Laubenheimer, 290 U.S. 276, 294-98 (1933) (noting that executive interpretation of a treaty provision is entitled to considerable weight). For the position at international law, see Vienna Convention on the Law of Treaties, art. 31(3)(b), at 49 (1978) and 14 M. Whiteman, Digest of International Law 399-402 (1970).

[41] *See* 22 U.S.C. § 2590 (1982).

[42] The first such statement, for fiscal year 1979, reads as follows: "Article V . . . prohibits the development, testing or deployment of all types of ABM systems or their components that are sea-based, air-based, space-based, or mobile land-based. . . . Article II defines an ABM system as a 'system to counter strategic ballistic missiles or their elements in flight trajectory' and describes current systems as consisting of ABM interceptor missiles, ABM launchers and ABM radars, [deleted][sic] Thus, [particle beam weapons] used for [ballistic missile defense] which are fixed land-based could be developed and tested but not deployed without amendment of the ABM Treaty, and the development, testing, and deployment of such systems which are other than fixed land-based is prohibited by article V of the treaty." Fiscal Year 1979 Arms Control Impact Statements, 95th Cong., 2d Sess. 231 (1978) (footnotes omitted).

[43] Fiscal Year 1985 Arms Control Impact Statements, 98th Cong., 2d Sess. 252 (1984); *accord* Fiscal Year 1984 Arms Control Impact Statements, 98th Cong., 1st Sess. 266-67 (1983); Fiscal Year 1981 Arms Control Impact Statements, 97th Cong., 2d Sess. 321 (1982); Fiscal Year 1982 Arms Control Impact Statements, 97th Cong., 1st Sess. 393-94 (1981); Fiscal Year 1981 Arms Control Impact

Statements, 96th Cong., 2nd Sess. 453 (1980); Fiscal Year 1980 Arms Control Impact Statements, 96th Cong., 1st Sess. 100 (1979).

[44] Dep't of Defense, *supra* note 3, app. B at B-2.

[45] *Id.* app. B at B-4 to B-9.

[46] *SDI Testing Is Reviewed in Light of Treaty Terms*, Wash. Post, Mar. 26, 1986, at 6, col. 5.

[47] *See Treaty Termination: Hearings Before the Senate Comm. on Foreign Relations*, 96th Cong., 1st Sess. 214 (1979); *see also, e.g.*, Coplin v. United States, 6 Ct. Cl. 115, 144-45 (1984) (holding that the President cannot unilaterally modify a treaty obligation on the basis of documents not approved by the full Senate), *rev'd on other grounds*, 761 F.2d 688 (Fed. Cir. 1985).

[48] Canons of Professional Ethics Canon 15 (1952); *see* Model Rules of Professional Conduct Rule 1.3 (1983); Model Code of Professional Responsibility Canon 7, EC 7-1 (1980).

[49] *See, e.g.*, J. Auerbach, Unequal Justice (1974); *President of Harvard Brands Legal System Costly and Complex*, N.Y. Times, Apr. 22, 1983, at A1, col. 6 (criticism of the adversary system by President Derek Bok of Harvard University).●

SAINT PATRICK'S DAY

● Mr. D'AMATO. Mr. President, we will have cause to celebrate next Tuesday. It will be March 17, the day this Nation sets aside each year to join in peace and friendship and in the spirit of Saint Patrick, the patron saint of Ireland. All across the country Irish-Americans, and many others who simply wish to join in the fun, will be marching and parading through the streets.

The Irish are very proud of their patron saint, a beloved friend and a symbol of hope that someday peace and equality will return to their troubled land. But Tuesday all the troubles will be forgotten, replaced with thoughts of glad tidings and good cheer. In many cities in Ireland, across America and around the world, people set this day aside to celebrate the goodness of life and the hope for a better life in the future.

From New York to Chicago and Boston to Baton Rouge, millions of Irish-Americans will be on hand to parade through the streets. In fact, it is an occasion for the biggest annual parade held in New York City. As many as 125,000 people will tread the 2½-mile parade route, which passes by St. Patrick's Cathedral, replete with bands, floats and highstepping marchers.

Many of my colleagues will participate in their home State parades. I will not miss mine. But no matter where we will celebrate, we join with the Irish and in the spirit of Saint Patrick. I know I speak for my colleagues, Mr. President, in sending blessings and wishing the best to the Irish people. I thank all those who will honor Saint Patrick's Day, and all those who will proudly wear the green.●

ADMINISTRATION RESISTANCE TO SOUTH AFRICAN SANCTIONS LAW

● Mr. SARBANES. Mr. President, earlier this week Mr. Owen Bieber, president of the United Auto Workers Union and member of the Advisory Committee on South Africa, wrote an excellent editorial piece for the Washington Post about the administration's rejection of a report by its own advisory panel regarding the value and effectiveness of economic sanctions against South Africa. As Mr. Bieber points out, regardless of the administration's position on the question of sanctions, the provisions of the Anti-Apartheid Act of 1986 are now law and must be implemented in good faith. I would ask that his thoughtful commentary be printed in the RECORD.

The editorial follows:

CLINGING TO QUIET DIPLOMACY

(By Owen Bieber)

Constructive engagement, never a particularly robust specimen of U.S. foreign policy, died a belated public death last October when Congress overwhelmingly voted to override President Reagan's veto of modest South Africa sanctions legislation.

The report from the president's own advisory committee on South Africa released last month gave the administration a new opportunity to stop trying to revive the corpse of quiet diplomacy and bury it once and for all. Instead, the administration rejected its own panel's conclusions that constructive engagement failed and strong international sanctions must be imposed against South Africa.

Reagan officials, who have argued for more time for their six-year-old approach of muting public criticism of Pretoria, saw no inconsistency in pronouncing congressional sanctions ineffective after only a few weeks in place.

They could not avoid, however, the obvious irony implicit in the report's embrace of international sanctions, given the fact that the president had created the advisory committee as part of his executive order aimed at successfully heading off very mild congressional sanctions in 1985.

The State Department criticized key conclusions of the Reagan panel the same day the report was formally presented to Secretary of State Shultz by its co-chairs, William Coleman, a former Republican Cabinet member, and Frank Cary, former IBM chairman. This is particularly unfortunate for three reasons.

First, the report's recommendation that the president consult with U.S. allies to enlist their support for sanctions is not something easily dismissed by the administration—it's the law of the land. The Anti-Apartheid Act of 1986 calls upon the president to convene a meeting of industrial democracies for the purposes of reaching cooperative agreements to impose sanctions against South Africa.

In denigrating multilateral sanctions, is the administration indicating its intention to violate the will of Congress? Given the apparent chasm between the law and the actions of key White House officials on Iran-Contra issues, this is hardly an idle question.

Second, by clinging to its soft-on-Pretoria approach, the administration signals to the white apartheid government that there is no penalty for escalation of violence against blacks, detention and torture of thousands including children, the suspension of press and speech rights, military attacks on neighboring countries and other reprehensible actions by the Botha regime.

Republicans and Democrats in Congress have concluded the United States should respond to South Africa's repression with sanctions, and so have the American people. The legislation now being implemented was drafted by members of the president's own party and stopped far short of what many Democratic members sought. The administration's intransigence, including the recent U.S. veto in the U.N. Security Council of a sanctions resolution, can only be a source of hope for apartheid advocates seeking to outlast economic pressures imposed from abroad.

Third, the continuing void of presidential leadership on South Africa, a problem even before the Iran-contra problems fully occupied the foreign policy apparatus at the White House and the State Department, adds momentum to perceptions of our international allies and enemies alike that the president isn't in charge.

Regardless of ideology or party, no one benefits from a vacuum of presidential leadership on foreign policy—and on South Africa, Reagan has been so out of touch with reality that he's lost even his own party.

The President and Secretary Shultz would be well served to get on with the vigorous enforcement of the Anti-Apartheid Act—to make the law of the land and administration policy one and the same. Should the congressional sanctions not result in South Africa's taking steps toward ending apartheid, the United States then will be confronted with two basic choices: Do we abandon economic pressures or do we escalate them?

Abandoning such pressures would not be likely to speed apartheid's destruction any more than constructive engagement has. Escalation of sanctions through measures such as those adopted by the House last June would be the key nonviolent form of significant pressure available to our government.

By rejecting key conclusions of its own South Africa panel, the administration undercuts pressure on the apartheid government and makes an escalation of sanctions in the future more likely and necessary.●

WORK OR WELFARE

● Mr. SIMON. Mr. President, the community of Rockford, IL, is one of those that has been hit by unemployment.

The Register Star of Rockford is considered to lean on the conservative side, and that is added weight to their editorial saying that we have to take a look at new ideas or revisit and modify old ideas to break the cycle of dependency and to encourage people to work.

The bill I will be introducing shortly to guarantee job opportunities is described briefly in the editorial.

That measure would help Rockford, IL, and would help a great many other communities and States in this Nation.

We have the strange combination of people unemployed who want to be working and all kinds of things that need to be done.

I believe that we can put these things together.

I ask that the Rockford Register Star editorial be printed in the RECORD, and I urge my colleagues to read it.

The editorial follows:

WORK OR WELFARE DILEMMA DIFFICULT

Today's problems are very different from those of the 1930s when President Roosevelt created the Works Progress Administration (WPA) to put Depression-plagued America back to work.

Yet, a spinoff of the WPA idea might have some value today. Illinois Sen. Paul Simon thinks so and has proposed a modified WPA-style work program for welfare recipients to get them off straight public aid.

Simon's plan would provide 32 hours of work a week at minimum wage for program participants. Communities would select projects, including such things as work at day-care centers, tree-planting projects, graffiti-cleaning and sidewalk repair.

A rather similar program, on a much smaller scale, is being used successfuly by Rockford Township for its welfare program.

Other state and national officials have made similar proposals, Gov. James Thompson among them. In his inaugural address, Thompson hinted at work programs for welfare recipients, but specifies are yet to come.

President Reagan has been critical of the welfare system as we have come to know it, but he has launched no national initiatives to change it other than to try to cut back.

Yes something must be done to break the generation-to-generation cycle of welfare dependency. But it must be done in the style of the 1980s and 1990s when the marketplace demands high-tech skills for a changing industrial base. New jobs are being created, yet studies show six of 10 new jobs created in recent years are in low-paying, service-sector fields.

Jobs must be created that will not only benefit society as a whole but provide healthy, productive futures for the individuals who are placed in them. Breaking the dependency cycle is not simply a question of whether to work or whether to take welfare.

Simon, Thompson and Reagan, like many others, have identified a problem. We hope the seeds of their ideas will eventually grow into a lasting solution to benefit all of the people.●

UNDERGROUND NUCLEAR TESTS

● Mr. SIMON. Mr. President, I am catching up on my reading and came across the February 15, Washington Post with an article by Cristine Russell headed "Underground Nuclear Tests Called Crucial for SDI."

The clear implication of this article is that we have refused to join the Soviets in knocking out all nuclear tests because we want to develop a special type of x-ray laser connected with SDI.

This has been published elsewhere also, but it is the first time I have seen as authoritative of source as George H. Miller of the Lawrence Livermore National Laboratory quoted.

The clear implication of the article is that we are refusing to restrain the arms race because we want to pursue this senseless dream of the strategic defense initiative. Even if we could rely completely on the computers and the technology to provide that shield, the reality is the Soviets will simply shift the type of nuclear warheads they produce to evade the concepts now under consideration.

To fail to put a halt to the arms race to chase after this particular possibility is madness. If we were to develop it, the lesson in history is clear that the Soviets will simply do the same and neither side is better off.

I urge my colleagues who may have been out of the Washington, DC, area during the recess and may not have seen the article to read it. It is not comforting reading.

I ask that the article be printed in the RECORD at this point.

The article follows:

UNDERGROUND NUCLEAR TESTS CALLED CRUCIAL FOR SDI

(By Cristine Russell)

CHICAGO, February 14.—A top U.S. weapons expert yesterday defended the use of underground nuclear testing as a crucial component in the development of the Reagan administration's Strategic Defense Initiative, but said its role has been "greatly distorted."

George H. Miller of the Lawrence Livermore National Laboratory said "nuclear testing will be required" to test the "survivability" of President Reagan's proposed space-based antimissile system in the event of attack by Soviet nuclear weapons.

Miller, who heads the nuclear weapons program at the Livermore, Calif., facility, funded by the Department of Energy, said, "The importance of nuclear testing for the survivability of any SDI assets has not received proper attention."

In a paper presented at the American Association for the Advancement of Science meeting here, Miller described the SDI system, popularly called "Star Wars," as "non-nuclear."

He said portrayal of future nuclear bomb-driven weapons, such as an x-ray laser, "as the flag ship and driving force behind SDI" has been "overblown." He said the "primary focus" of U.S. research into such weapons is to study the possible threat of the Soviet Union using such weapons to defeat a space-based defense system.

Miller said research involving nuclear explosive-powered lasers is a "small part" of SDI research, comprising a few hundred million dollars out of a national program of more than $3 billion.

"It will take approximately 10 to 20 nuclear tests to provide decision makers with relevant data on a counterdefense X-ray laser, not the several hundred reported by the media," he said.

Miller spoke at a session on technical and scientific issues involved in the ongoing global debate over whether to ban nuclear testing.

Citing U.S. refusal to join in a test ban, the Soviet Union announced this month that it was lifting its 18-month moratorium on nuclear testing, after the U.S. conducted its first nuclear test of 1987.

Miller said the United States typically conducts "less than 20" underground nuclear tests annually. And he said that while computer simulations of such tests are "very important," they cannot be a substitute for nuclear testing. He argued that testing is needed to maintain stockpiled weapons, to measure the survivability of weapon systems in general, to modernize existing weapons and to keep up with Soviet weapons development.

As a result, Miller and Richard L. Wagner, Jr., a former Defense Department official now with Kaman Sciences Corp., said nuclear testing is needed for the foreseeable future. Miller said a comprehensive nuclear test ban would be a "disastrous first step" for the United States to take in arms-control pact.

Physicist Richard L. Garwin, a fellow at the IBM Thomas J. Watson Research Center affiliated with several major universities, criticized the administration's nuclear testing stance, saying, "It would be very much in U.S. interests to have a ban on all nuclear tests." He said a superpower ban would help prevent nuclear proliferation by other nations and prevent further development of nuclear-powered weapons such as the x-ray laser by either side.

Lynn R. Sykes of the Lamont-Doherty Geological Observatory of Columbia University said seismic monitoring and other technologies make it possible to verify "with high confidence" compliance with a comprehensive test-ban treaty.

Today marked the start of the 153rd national meeting of the AAAS, the nation's largest general scientific organization. The five-day gathering includes more than 130 sessions on subjects ranging from criminal justice to neuroscience.●

BILL HELD AT DESK—H.R. 1505

Mr. BYRD. Mr. President, I have cleared this request with the Republican leader.

I ask unanimous consent that H.R. 1505 be held at the desk until the close of business on Tuesday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TUESDAY, MARCH 17, 1987

RECOGNITION OF CERTAIN SENATORS

Mr. BYRD. Mr. President, I ask unanimous consent that on Tuesday, after the two leaders have been recognized under the standing order, the following Senators be recognized each for not to exceed 5 minutes: Senators PROXMIRE, ARMSTRONG, WILSON, REID, LEAHY, BENTSEN, and BINGAMAN.

The PRESIDING OFFICER. Without objection, it is so ordered.

WAIVER OF CALL OF THE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent that the call of the calendar be waived on Tuesday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

NO RESOLUTIONS OVER UNDER THE RULE TO COME OVER

Mr. BYRD. Mr. President, I ask unanimous consent that on Tuesday next no resolutions over under the rule come over.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. BYRD. Mr. President, earlier today, I stated for the RECORD the outlook for next Tuesday and for the week as far as I could foresee. I indicated that rollcall votes could very well occur at any time next week

during the days of Tuesday, Wednesday, Thursday, and Friday.

I ask unanimous consent that my statement of the program, which has already been made, appear in the RECORD just prior to the motion to adjourn over.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

PERMISSION TO SUBMIT BILLS AND JOINT RESOLUTIONS

Mr. BYRD. Mr. President, I ask unanimous consent that Senators may have until 5 p.m. today to submit bills and joint resolutions.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. BYRD. Mr. President, on Tuesday next, I anticipate that the Senate will begin consideration of the disapproval resolution with respect to Contra aid funding. I have not had an opportunity to discuss this with the distinguished Republican leader or with Senator WEICKER, the author of the disapproval resolution. I hope that it will be possible to set a definite hour on next Wednesday at which time the Senate may vote up or down on the disapproval resolution.

There is a time limitation on that resolution of 10 hours. No motion to table, no motion to recommit, no motion to reconsider, no motion to postpone will be in order and no amendments will be in order.

Consequently, there will be a vote and, as I say, I hope it will be next Wednesday, and I also hope we can announce, well in advance, the hour at which that vote will take place so that all Senators may be prepared, and on notice.

ADJOURNMENT UNTIL TUESDAY, MARCH 17, 1987, AT 2:30 P.M.

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in adjournment until the hour of 2:30 o'clock next Tuesday afternoon.

The motion was agreed to and, at 11:21 a.m., the Senate adjourned until next Tuesday, March 17, 1987, at 2:30 p.m.

NOMINATIONS

Executive nominations received by the Senate March 13, 1987:

DEPARTMENT OF JUSTICE

Dwight G. Williams, of Mississippi, to be U.S. Marshal for the northern district of Mississippi for the term of 4 years, reappointment.

Robert W. Foster, of Ohio, to be U.S. Marshal for the southern district of Ohio for the term of 4 years, reappointment.

Basil S. Baker, of Texas, to be U.S. Marshal for the southern district of Texas for the term of 4 years, reappointment.